



Cat's in the cradle
An introductory overview of the provisions of the *Legal Services Regulation Act*



Wham, bam...
Planning proper pension provisions in the event of divorce proceedings



Wild thing
Is there a case for extending rights to natural objects in the environment?

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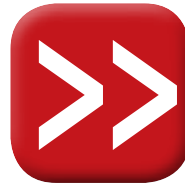
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DIRECTOR OF LEGAL – IN-HOUSE

A large multinational is looking to appoint a Senior Director of Legal to their Dublin operation. This is a client-facing position and the appointed Solicitor will establish strong relationships with both internal and external clients, business partners and foster a client focused approach with respect to the performance of all Legal & Risk Management responsibilities.

BANKING SOLICITOR – ASSOCIATE LEVEL

Top tier Private Practice Firm require a Banking Solicitor to expand their growing team. This role is ideal for an experienced Banking Solicitor looking to grow their career with a firm on an international platform. This position offers excellent remuneration and progression for the right person.

IN-HOUSE COMMERCIAL CONTRACT COUNSEL – ASSOCIATE LEVEL

Excellent In-house position available with Multinational based in Dublin. The successful candidate will ensure all contracting processes and procedures are followed with respect to the negotiation and execution of commercial contracts. Ideal for a Practice Solicitor looking to move in-house or a Professional already working in commercial contracts.

JUNIOR SOLICITOR – FUNDS

International Law Firm in Dublin is offering a unique opportunity for a Junior Solicitor who is interested in growing their career in the funds space. The applicant does not require previous funds experience but must have a keen desire to upskill in this area. The successful appointment will have an opportunity to work both domestically and internationally. This position will offer excellent remuneration and progression for the right person.

AVIATION FINANCE LAWYER – SENIOR ASSOCIATE LEVEL

International Private Practice firm in Dublin seeks an experienced Aviation Finance Lawyer to join their team. The ideal candidate will have gained Aviation Asset Finance experience within a Top Tier Law Firm or as In-house Counsel to an Airline or Aircraft Leasing Company.

WORKING TO FULL CAPACITY

Towards the end of last year a very important piece of legislation – the *Assisted Decision-Making (Capacity) Act 2015* – was passed by the Oireachtas and signed into law. This act marks a significant development in recognising the legal rights of vulnerable persons and in providing adequate support to be made available to assist people whose decision-making capacity is in question, or may shortly be in question. The legislation is expected to come into operation during 2016 and, while welcome, represents a significant challenge for our profession, as it will affect nearly every area of practice.

It is appropriate that I pay tribute to the Law Society's Mental Health and Capacity Task Force, in particular its chairperson, Patricia Rickard-Clarke, who has been a tireless advocate for change in the area. We are extremely grateful to her and her colleagues in the task force for their huge work in helping to bring about this very important piece of legislation.

Charity begins at home

Since assuming office, I have inevitably participated in many events and functions, a number of which were associated with, or resulted from, the great charitable efforts of a number of colleagues. Irish Rule of Law International

was founded in 2007 by one of my predecessors, Michael Irvine, and others, and runs a number of worthwhile projects in disadvantaged countries, such as Malawi. Irish Rule of Law International cannot continue with these worthwhile projects without funding.

To this end, a very pleasant evening was had in the Law Society in early December, when musical entertainment was provided by various and very talented members of both branches of the legal profession.

Some weeks previously, at the cluster event in Cork, a small cheque was presented to Irish Rule of Law International, being the entire proceeds of an earlier cluster event. It all adds up to keeping these projects running and is to the credit of numerous lawyers who give up a lot of their free time to do so.

Another charitable project is, of course, the annual Calcutta Run. Towards the end of last year, I was privileged to participate at the formal handing over of the proceeds of last year's run to the two nominated charities, GOAL and the Peter McVerry Trust. The charities received €72,000 each. Hopefully, this year's Calcutta Run, which takes place on 21 May next, will prove to be just as successful. As for my own participation, an old war wound prevents me from road-running (excuses, excuses!), but I do hope to power-walk the course on the day, and I have conscripted my

daughter and her partner, who both tell me that they are already in high-altitude training for the event.

In the past few weeks, I was privileged to preside over two very pleasant events in the Law School. Firstly, there was a celebration to commemorate the international achievements of three victorious moot court teams, which was attended by the parents of the victorious students. TP Kennedy, Geoffrey Shannon and Jane Moffatt, respectively, coached and mentored the three teams.

In addition, a room-naming ceremony was held in the revamped Green Hall, which has been called after past-president Michael V O'Mahony. Michael's work for the Society, but in particular the education side of the house over a period of almost 40 years, has been immense. Our special guests included Michael and his extended family, partners of McCann FitzGerald Solicitors, both past and present, members of the Law Society Council, and staff of the Society.

Finally, the 'Murphy Roadshow' moved up some gears in the past weeks when the director general and I visited the Louth, Waterford, Galway, Tipperary and the Midland Bar Associations. It was a great privilege to meet up with so many colleagues and to have honest, forthright, but always enjoyable exchanges with everyone we met. I'm really looking forward to more of the same as the year continues.



“ The Assisted Decision-Making (Capacity) Act 2015 will impact on nearly every area of practice ”


Simon Murphy
President



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Eradicating money laundering and terrorist financing has become a priority for legislators and policymakers, and the focus on its prevention and detection looks set to intensify considerably, writes Helen Kehoe

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Pic: iSTOCK

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The *Assisted Decision-Making (Capacity) Act 2015* governs the law in relation to adults who are experiencing difficulties with decision making – and it changes the definition of 'capacity'. Kate Butler holds your hand

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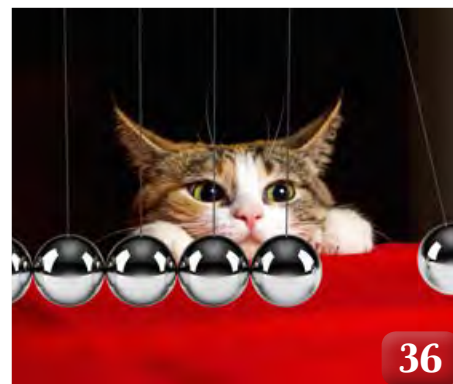
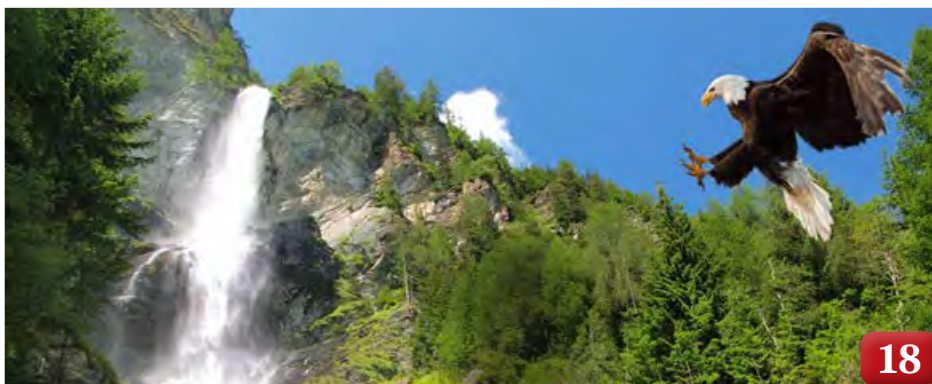
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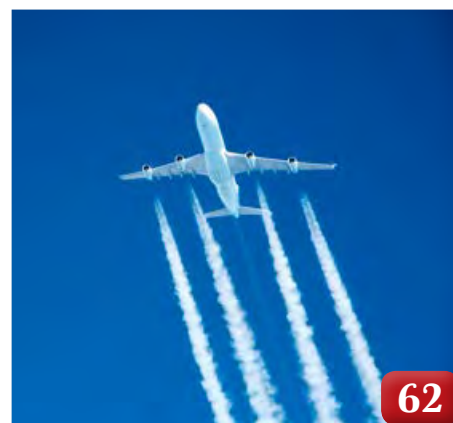
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- ... as well as lots of other useful information

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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

GALWAY

District Judge retires

On 4 March, Galway colleagues gathered to break bread and partake in a refreshment or two to pay tribute to the respected and popular Judge Geoffrey Browne on his retirement. The event also marked the appointment to the judiciary of Brian O'Callaghan (a recent Galway local, late of Cork) and Mary Larkin.

Thomas O'Donnell, Liam Geraghty and Gerard Moylan were honoured with presentations to celebrate their 50 years in practice.

Well Holy God, it's a CPD in Galway!

The Galway Solicitors' Bar Association's next CPD event takes place on Thursday 24 March at 2pm in Galway Courthouse (three hours of CPD, general), featuring Jim Connolly and Aoife Lavan (both Goodbodys) on pension adjustment orders and obligations on employers in relation to employee pensions. This will be followed by the Easter social at 6pm in the Front Door Pub, Shop Street, Galway.

LOUTH

Wee County welcomes Murphy and Murphy

Dundalk's finest turned out recently to welcome Law Society President Simon Murphy and director general Ken Murphy to their town – and to salute the new president of the Louth Bar Association, Catherine McGinley. Catherine is the daughter of respected local solicitor Roger McGinley, who was there to witness the inauguration.

The outgoing president, Conor MacGuill, respected the democratic traditions of the association and handed over the presidency without the need for a show of force. Murphy & Murphy brought Louth solicitors up to date on the *Legal Services Regulation Act* and fielded a raft of questions before being fed and watered in the Market Tavern.

The highlight of the evening was the performance of



Director general Ken Murphy, Law Society President Simon Murphy and Catherine McGinley (president of County Louth Solicitors' Bar Association)

Glengarry Glen Ross in the Town Hall Theatre, starring local state solicitor Fergus Mullen and Tim

Ahern. An unforgettable night in Dundalk for natives, visitors (and thespians) alike.

DUBLIN

DSBA pilgrims head for Mayflower

The Mayflower Hotel in Washington DC is the venue for this year's DSBA annual conference, which takes place from Wednesday 21 September to Sunday 25 September.

The Mayflower is a historic hotel listed on the National Register of Historic Places and located just four blocks from the White House in one of the best neighbourhoods for retail, dining and entertainment. It is known locally as 'Washington's

second best address'. It has hosted inaugural events for many US presidents since its foundation in 1925. On the eve of his inaugural address, in room 776, Franklin D Roosevelt penned one of the most famous lines in US political history: "The only thing we have to fear is fear itself." Restaurant patrons included FBI director J Edgar Hoover, who dined in the Mayflower nearly every working day for 20 years, selecting the same items

from the menu until his death of a heart attack in 1972.

Delegates to the conference will find themselves in the thick of the US Presidential, House and Senate elections, as well as the centenary celebrations of the birth of JFK. DSBA president Eamonn Shannon tells 'Nationwide' that you can fly direct from Dublin to Dulles Airport in DC with Aer Lingus. Full conference details are available at www.dsba.ie.

Objections, your honour

Following a sell-out seminar in February on commercial property – which featured Paul Coughlan BL on landlord and tenant matters, Gerry Gallen (partner in Beauchamps) on navigating licensing issues facing property practitioners, and Tom Power BL (AITI) on dealing with tax on property – the DSBA Property

Law Committee is offer a 'new' objections and requisitions on title seminar on 10 March.

The line-up for the March seminar includes Ronan McLoughlin (partner with Gallagher Shatter, and previous partner in the commercial property department at Matheson); Aine Gleeson (associate with Hayes

Solicitors), who has over 12 years' experience acting for corporate, private and public-sector clients on all aspects of commercial conveyancing transactions; and Mairead Cashman (senior solicitor in charge of the commercial and property section of the law department, Dublin City Council).

representation News from the Law Society's committees and task forces

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

ADR process approved by High Court

Practitioners should be aware of a recent decision of Mr Justice Cross made in the High Court on 16 December 2015. The court was invited to make an order by the defendants pursuant to order 56A, rule 2(1)(i) of the *Rules of the Superior Courts 1986*, or based on the inherent jurisdiction of the court, inviting the parties to use alternative dispute resolution (ADR) process to settle or determine proceedings.

The proceedings in *Gaffney v Deputy International Limited* involved a personal injury claim alleging that the plaintiff was provided with a defective hip implant by Deputy, which was the subject of a recall by Deputy in August 2010.

The order made by Mr Justice Cross relates not just to the *Gaffney* case but to all other cases listed for trial before the High Court arising out of the same set of circumstances, or such proceedings not yet listed for trial.

Mr Justice Cross, after hearing arguments over a number of days on the motion brought by Deputy International Limited, approved of an ADR process as appended to his order and directed that no further proceedings in the litigation would be listed for hearing, save by application to the court.

The Law Society's ADR Committee believes that that this is the first time a court has approved of an ADR process designed particularly to deal with a class of actions that, in the views articulated in the High Court, could occupy the personal injuries list of the High Court for a number of years to come.

This development comes against the background of a statement made by the Minister for Justice in the Dáil concerning a *Mediation Bill*, currently at the

drafting stage. According to the minister, that bill will introduce an obligation on solicitors and barristers to advise any person intending to commence legal proceedings to give consideration to using mediation as an alternative means of resolving disputes.

There is an expectation that the bill will also provide that, following the commencement of proceedings, a court may – on its own initiative or at the request of a party – invite parties to consider mediation as an alternative, and suspend proceedings to facilitate

the mediation process.

Perhaps equally significant will be the pre-action protocols to be issued by the minister under section 219 of the *Legal Services Regulation Act 2015* governing clinical negligence (or medical) actions, which may involve a pre-action agreement to mediate as a requirement.

Practitioners should refer to the *ADR Guide 2015*, published by the Alternative Dispute Resolution Committee in September 2015, a copy of which the Society will send shortly to every firm in the State.



IN-HOUSE AND PUBLIC SECTOR COMMITTEE

In-house solicitors – date for your diaries

The In-house and Public Sector Committee, in partnership with Law Society Professional Training, is holding a panel discussion on the challenges and opportunities facing the in-house sector and the types of support the Law Society can provide. The discussion will take place from 3-5.30pm on 19 May 2016 in the James O'Sullivan Room at the Education Centre, Blackhall Place, Dublin 7.

Working as an in-house solicitor in Ireland is an ever-changing, challenging and exciting experience. In recognition of this, the Law Society wishes to engage more closely with solicitors working in this sector so that it can better understand its specific issues and needs, and provide focused support.

To this end, the Law Society, in consultation with its In-house and Public Sector Committee, has taken up a number of initiatives. An internal briefing document, *In-house Solicitors – A Growing Constituency: An Overview of Key Issues*, has been prepared with two aims:



- Identify key issues and trends relating to in-house solicitors, so that the Society can best meet their specific needs, and
- Assist in marketing and framing the value of in-house solicitors and trainees to existing and prospective employers.

The committee has been working on developing proposals and actions in a number of areas addressed in the document, including:

- Training and education for in-house solicitors,
- Trainees in an in-house setting,
- Marketing the value and role of in-house solicitors, and
- Workplace and professional issues facing in-house solicitors.

In addition, Red C, the independent market research firm, was engaged by the Law Society to conduct an independent and confidential survey of the in-house sector in early February. The survey was designed to gather information about important aspects of in-house solicitors' organisations and work, the issues they face, and the types of support they would like the Law Society to provide.

Please join us at the panel discussion, where we will share and discuss the survey's findings, the specific topics dealt with in the briefing document, and the next steps that should be taken to help support the in-house sector.

Full details, including a brochure and booking form, will be posted on the Society's website in due course.



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1916 commemorated in the Four Courts on Easter Monday

Readers may have noticed the timely appearance after Christmas of the *Proclamation of the Republic* in the corridor outside the Solicitors' Reading Room in the Four Courts. This corridor is known informally as 'slaughter corridor', due to the war memorial marking the solicitors who died in WWI and was the subject of a number of heated letters to the *Gazette* some years ago.

The corridor has a plaque to the memory of solicitor John S O'Connor, who was featured in the *Jan/Feb Gazette*.



PIC: GETTY

Mr O'Connor's firm presented the proclamation to the Law Society following the purchase of

Blackhall Place. It ended up in a consultation room, before being displayed in its current prominent

position. Taoiseach Jack Lynch presented the proclamation on behalf of the law firm to the Law Society.

According to the Courts Service, on Easter Monday (28 March), events in the Four Courts will include a 1916 exhibition – 'Bullets, books and barricades: the story of the Four Courts Garrison' – in the Round Hall. There will be a series of talks relating to the Rising. Entry is free, with tickets available from RTE, which is hosting a day of events on Easter Monday on the theme 'Reflecting the Rising'.

McCann FitzGerald bites into the Big Apple

McCann FitzGerald has opened an office in New York. Corporate partner Gary McSharry will head up the branch, which is located at Tower 45 at West 45th Street in the midtown district of Manhattan. He has particular expertise advising US clients, having already spent a number of years in New York.

Gary commented: "There is a growing demand for an Irish corporate law presence in the US – evidence of which is that many of the largest US corporate and



Barry Devereux (managing partner, McCann FitzGerald) and Gary McSharry

merger and acquisition transactions in the past 24 months involved Irish companies. These deals

required significant input from Irish corporate lawyers as well as US lawyers."

152nd AGM of SBA

The 152nd annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society's Blackhall Place headquarters on Tuesday 19 April 2016, at 12.30pm, to consider the annual report and accounts for the year ended 30 November 2015, elect directors, and deal with other matters appropriate to a general meeting.

Ars gratia artis

Mason Hayes & Curran is sponsoring a new children's art education programme called 'RHA Kids'. The two-year sponsorship will support the Royal Hibernian Academy's children's art education programme and will fund a special art education programme with three schools in Ringsend.

The programme includes a series of in-house children's art workshops by some of Ireland's best known artists. These will take place one Saturday each month throughout 2016.



Kennedys hires new partner

Kennedys has expanded its Dublin office with the appointment of partner Daniel Scanlon into its growing insurance and litigation practice. Scanlon joins from Maples & Calder, where he was a key member of its insurance disputes and commercial litigation group since 2011.

Daniel qualified with Mayer Brown in London in 2002 and also worked in its New York office. He then moved to Simmons & Simmons in Hong Kong before taking a role at Matheson in Dublin.

Kennedys' Dublin office was established in 2011, following the merger of the firm with its long-standing Dublin associate.

FOCUS ON MEMBER SERVICES

B&B at the Law Society

Exclusive to members, the Law Society's B&B offers a competitive alternative to expensive city-centre hotels.

Situated in the historic building at Blackhall Place, the B&B is five minutes from the Smithfield and Museum Luas stops and close to Heuston Station, the Four Courts and the Criminal Courts of Justice.

A single room is €45 and €65 for a double/twin room, with breakfast included (continental at weekends). All rooms are ensuite, with television, wi-fi and tea/coffee making facilities. Residents can avail of free parking onsite, with the reassuring presence of 24-hour security.

The B&B is available for bookings seven days a week. Late arrivals are easily accommodated, but early booking is recommended.

To check availability or to book a room, contact Law Society reception at general@lawsociety.ie or 01 672 4800.

New legal advice scheme announced for those in mortgage arrears

The Government has announced an important new initiative to provide access to independent expert financial and legal advice for people who are insolvent and in serious mortgage arrears on their home.

The scheme is being coordinated by the Departments of Justice and Social Protection, working with the Money Advice and Budgeting Service (MABS), the Legal Aid Board, the Insolvency Service of Ireland, and the Citizens' Information Board – in consultation with the Courts Service.

The Legal Aid Board is currently setting up a panel of private solicitors to deliver the legal advice component of the scheme (see advertisement in this issue, p26). It's expected that this will provide:

- Legal advice,
- A new 'duty solicitor' service at repossession hearings before the County Registrar (similar schemes already operate successfully in England and Northern Ireland),
- A legal aid service for the new court review under the



PIC: iSTOCK

The Legal Aid Board is setting up a panel of solicitors to deliver the legal advice component of the scheme

Personal Insolvency Acts, where creditors refuse a personal insolvency proposal by a borrower that includes their home mortgage arrears.

The scheme will also provide for financial advice and assistance from a personal insolvency practitioner (PIP), dedicated MABS mortgage arrears adviser, or other financial adviser, as appropriate. The financial analysis and advice will be

provided in writing to the legal adviser.

The overall objective is to ensure that an insolvent person who is at risk of losing their home can access independent financial and legal advice, which will help them to identify their best options for returning to solvency – with the priority being to remain in the home, where that is a sustainable option.

MABS will act as the gateway for a person to access advice under the scheme, which will be provided without charge to those eligible. Professionals on panels will agree to provide specified services at fixed cost to the scheme. Legal aid for the defence of repossession cases will not be covered under the scheme, and persons seeking this will be subject to the normal legal-aid means and merits criteria.

The scheme is expected to begin operation in April and will be in place for a maximum period of three years. Full details will be published over the coming weeks on the websites of the Legal Aid Board and the other implementing Government agencies.



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Pre-contract title investigation

The Conveyancing Committee is considering moving towards making a recommendation that all title matters are investigated pre-contract instead of post-contract, as has been the position until now. This will be a significant change in conveyancing practice if it is to proceed.

The rationale for the current practice is that solicitors do not want or need to spend too much time investigating all title matters pre-contract, in case the transaction might not ultimately proceed to contract.

The downside of a move to a full investigation of all title matters pre-contract would include that the cost of title investigation is incurred before a binding contract is in place.

The reasons a change is being considered include:

- There is a perceived disconnect between the traditional conveyancing theory as reflected in the standard contract for sale and what is occurring in practice, in that extensive title enquiries are routinely being raised pre-contract,
- There is a view that this gives rise to time-consuming duplication of work,
- The increase in the number of pre-contract enquiries is

due to the large amount of new legislation that affects conveyancing, which is not covered by existing contractual warranties,

- Pre-contract enquiries protect purchasers,
- The move to electronic conveyancing will require all title matters to be addressed pre-contract, and any move at this time to pre-contract title investigation would be an interim step,
- There is no uniformity of pre-contract enquiries,
- It is envisaged that if there is to be a recommendation to move to pre-contract investigation of all title matters, it would be on the basis that a standard set of requisitions on title with replies would be issued by a vendor's solicitor, along with the contract for sale, and a purchaser's solicitor would be entitled to raise any additional matters pre-contract.

If you have a view on the above or related issues, the committee would like to hear from you. You can make your submission to the following dedicated email address, set up to get feedback from the profession on this topic: precontractenquiries@lawsociety.ie.

European opportunities for Irish-speaking lawyers?

With the derogation on the full use of Irish in the structures of the European Commission and European Parliament due to be phased out between 2015 and 2021, graduates from UCC's MA in Irish Language and European Law will be uniquely placed to capitalise on increased employment opportunities for lawyer-linguists and legal translators.

According to Prof Pádraig Ó Macháin, director of the course, it's also suitable for people who want to work in Ireland: "Holders of this degree will add

a professional qualification in the Irish language to their portfolio of skills – an important element in the area of Irish constitutional law in particular."

The one-year course will start in September 2016 and is aimed at holders of law degrees or other professional qualifications in law who already have a good standard of Irish and who wish to raise that standard significantly while specialising in European law.

For more information, email p.omachain@ucc.ie or visit www.ucc.ie/en/ckd49.

THERE'S AN APP FOR THAT



Time is money

APP: OFFICETIME PRICE: €7.99

I couldn't recommend the *OfficeTime* app more, writes *Dorothy Walsh*. I have been searching for an app that allows me to record the time I spend on various tasks that are difficult to time record when I'm not at my PC or don't have access to the time-recording system in my case-management software.

The bill of costs is, of course, a reflection of the time spent on a case or a file. However, more often than not, I am now in a position where work done for a client – research, emails, text messages, telephone calls – when I am out of the office are not getting included in that bill, due largely to the time it takes to add the details in after the event. I found that while I was billing for work done in the office and in court, at meetings, for instance, I was missing a lot of billable time consumed outside of the office.

Enter *OfficeTime*. The app allows you to set up an expense

or a task for a particular client or file reference, time that task with an hourly rate (where applicable), and export that information in a note format. It also facilitates attaching a flat rate to the likes of a phone call or a text message, or whatever you wish to set up as a flat rate category. The time or amount can be saved against a client's name or file reference in the app.

As soon as I finish a client call, I click into the app and, on the homescreen, click '+New Session' (for a timed task) or '+New Expense' (for a flat-rate task). I mark the project according to the client's name, while the category is recorded as a phone call.

I have been amazed at the time I was failing to bill for before using this app. With this app, my bill of costs for clients are totally transparent, accurate, and reflect the actual time I have spent on files – whether in or out of the office.



Stage International à Paris – get ready for 2016 programme

The *Stage International* is a two-month internship programme hosted by the Paris Bar. Following a selection process, I was chosen by the EU and International Affairs Committee to participate as the Law Society's delegate, writes Ruth Jordan (solicitor).

The Paris Bar has hosted the *Stage* since 1991 and, each year, invites a limited number of lawyers from other jurisdictions to participate. Approximately 40 lawyers from 30 different countries took part in this year's *Stage*. The tuition fee (which includes a trip to Brussels to visit the European institutions) is covered by the Paris Bar.

The *Stage* offers a unique opportunity to develop business and personal relationships with other lawyers from different legal systems and cultures. It consists of one month attending classes at L'École de Formation du Barreau and one month's work placement in a law firm. I took part in the Francophile programme but, for the first time, the Paris Bar also simultaneously ran an Anglophile programme.



Participants in the *Stage International* in Paris. Irish participant Ruth Jordan can be seen in the middle of the second-last row

The first month provides an overview of the civil system, in particular the French legal system, and specific lectures focused on intellectual property, employment law, family law, arbitration, European law, and ethics. Field trips included visits to various judicial and administrative institutions, such as the National Assembly, the Court of Appeal,

the Commercial Court and the Council of State.

For the second month, I had the good fortune to be placed in a leading commercial firm, De Pardieu Brocas Maffei, where I gained valuable experience in the firm's Competition and Regulation Department. I would highly recommend the *Stage* to anyone with a solid level of

French and an interest in a legal and cultural exchange.

I would like to sincerely thank both the EU and International Affairs Committee for selecting me and my employer, VHI Healthcare, for facilitating time off in order to take advantage of this fantastic opportunity. (See *advert in next issue announcing Stage 2016*.)

Damages launched



PICTURE: MOYNA NOLAN, IRISH EXAMINER

It was a glittering occasion as 400 solicitors and barristers joined judges and ambassadors for the launch of *Damages* by Tadhg Dorgan BL and Peter McKenna BL, pictured here with Ms Justice Baker at Kings Inns

New DCU LLM

The School of Law and Government at DCU is currently accepting applications for its LLM (masters in law) programme 2016/17 academic year. Although a general LLM, students can choose modules in particular areas, such as public law, human rights law or

international law.

The programme welcomes applicants at any stage in their careers. There is an expectation of a 2.1 honours degree in law or in an interdisciplinary degree with a strong legal component. For details, contact tom.hickey@dcu.ie.

Human Rights Essay Prize winners announced

The Law Society Human Rights Committee congratulates Breifne Muldoon on winning first place in its Annual Human Rights Essay Prize for his essay on the impact of the *Convention on the Rights of Persons with Disabilities* on Irish mental health law. James Roddy took second place for his essay on the impact of

the *Victims' Rights Directive* in Ireland.

The committee extends its thanks to all who entered the competition.

For information on the work and events of the Human Rights Committee, visit: www.lawsociety.ie/Solicitors/Representation/Committees/Human-Rights.

23% of solicitors practise in 20 largest firms

As it has done annually for a number of years, the *Gazette* publishes the number of practising certificates issued by the Law Society to each of the 20 largest firms in this jurisdiction at the end on the most recent practice year.

It reveals that on 31 December, 2015, the 20 largest firms, between them, had 2,294 practising certificates – an increase of 108, or 5% on the number at the end of 2014. Perhaps surprisingly, this was a lower rate of growth than the 9% increase in the practising year to 31 December 2014 – despite the economy having experienced GDP expansion of some 7% in 2015.

There were 9,707 practising certificates (PCs) issued by the Law Society to the solicitors' profession as a whole in 2015. This represented an increase of 4% over the 9,323 issued in the previous year.



There were 2,285 private practitioner firms of all sizes, including a great many sole practitioner firms, on 31 December 2015. The 20 largest firms represent less than 1% of the total number of firms. But their practising certificate number, at 2,294, constitutes a massive 23% of all PCs issued.

Once again, Arthur Cox was the largest firm in 2015, increasing its

solicitors by 20 (7%). Its PC tally of 269 in 2014 increased to a new record of 289 in the year under review. If it maintains this rate of growth, it should comfortably exceed 300 PCs by the end of 2016.

A&L Goodbody has resumed second place in the table, having overtaken its close rival Matheson this year – largely because Matheson's PC number

dropped by 20 in the course of 2015. McCann FitzGerald, Mason Hayes & Curran, William Fry, ByrneWallace, Maples and Calder, and Eversheds maintained the same ranking in 2015 as in 2014. Ronan Daly Jermyn moved ahead of Dillon Eustace, however, due to its PC numbers growing by 12, while Dillon Eustace remained unchanged with 78 PCs.

At the lower end of the top 20 league table, the biggest growth in PC numbers was recorded by Walkers Ireland (up nine, to a total of 40 PCs) and by McDowell Purcell Solicitors (plus 11 to 39), while Philip Lee (up four) shared 20th position with Whitney Moore, which grew by one.

As in previous years, 18 of the 20 largest firms are Dublin-based, the only exceptions being Cork firm Ronan Daly Jermyn (which also has offices in Dublin and Galway) and Holmes O'Malley Sexton (Limerick and Dublin).

Law firm practising solicitor numbers (as of 31/12/2015)

2015 ranking	2014 ranking	Firm name	31/12/2015	Diff +/- over 2014	31/12/2014	31/12/2013
1	1	Arthur Cox	289	20	269	258
2	3	A&L Goodbody	260	-2	262	246
3	2	Matheson	245	-20	265	238
4	4	McCann FitzGerald	212	8	204	184
5	5	Mason Hayes & Curran	188	10	178	147
5	6	William Fry	188	11	177	174
7	7	ByrneWallace	107	11	96	93
7	8	Maples and Calder	107	13	94	81
9	9	Eversheds	95	11	84	72
10	11	Ronan Daly Jermyn	87	12	75	68
11	10	Dillon Eustace	78	0	78	74
12	12	Beauchamps	74	2	72	68
13	13	Eugene F Collins	55	-2	57	55
14	14	LK Shields Solicitors	53	4	49	50
15	15	Hayes Solicitors	41	5	36	36
16	19	Walkers Ireland	40	9	31	21
17	21	McDowell Purcell Solicitors	39	11	28	26
18	16	Holmes O'Malley Sexton	36	0	36	29
19	17	DAC Beachcroft Dublin	34	0	34	32
20	18	Whitney Moore	33	1	32	28
20	20	Philip Lee	33	4	29	24

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/2015. The total firm figure represents a firm's primary and suboffices on the Law Society's database

Law and Women programme puts women front and centre

In the *Jan/Feb 2015 Gazette*, Teri Kelly (director of representation and member services) reported that the solicitors' profession in Ireland was the first in the world to have a female majority. It is important that our female solicitors are supported in their careers so that they can achieve equal treatment, equal pay, and equal advancement opportunities.

A new initiative to help achieve this aim was profiled in the *Gazette* (see [December 2015](#)), with the announcement



of the Law and Women (L&W) pilot mentoring programme, a joint initiative by the Law Society and the Bar of Ireland, in collaboration with the Irish Women Lawyers' Association (IWLA), to support women in legal practice.

During January 2016, L&W – jointly financed by the Law Society and the Bar of Ireland – organised training for mentees and mentors at various stages of their careers. Solicitors and barristers shared these training sessions, which were facilitated at Law Society and Bar venues.

Matching of mentoring pairs for 12 hourly sessions over a 12-month period took place during February. A mentoring agreement approved by both mentee and mentor ensures that the relationship

is based on a shared set of expectations and is structured and effective for both parties. There will be a mid-pilot review of the roll-out of this mentee-led programme in July 2016.

All joint committee members, mentors volunteering their time, and colleagues committed to being mentors are to be congratulated. All excitedly await the outcome of this pilot phase and look forward to this programme becoming a successful annual event.

Society nominates two to LSRA board

The Law Society Council has unanimously approved Geraldine Clarke and James MacGuill as nominees to the board of the Legal Services Regulatory Authority. Both are past-presidents who have represented the Society nationally and internationally at CCBE and IBA level.

The LSRA board will have 11 members, each serving a term of three years. The Society was required to provide the names of two nominees, one male and one female. The chair will be chosen by the Government from among the nominated lay members of the board.



Geraldine Clarke

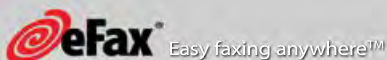


James MacGuill

Legal Vacancies upgraded

An enhanced online legal vacancies facility has just been launched by the Law Society at www.legalvacancies.ie.

The Legal Vacancies website has long been the premier source for information on legal employment opportunities in Ireland. The new facility will significantly improve services to both job-seekers and employers. Upgraded resources will mean that job-seekers can sign up for personalised job alerts. There will be several new options for employers, including the capability to differentiate their job listing as a 'Hot job' or as 'Job of the week'.



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County Louth Solicitors' Bar Association AGM



PIC: CIARA WILKINSON; CIARAWILKINSON03@GMAIL.COM

Attending the County Louth Solicitors' Bar Association AGM on 10 February 2016 were (*front, l to r*): John McGahon (treasurer), Niall Breen (incoming secretary), Conor MacGuill (outgoing president), Catherine MacGinley (president elect), Ken Murphy (director general), Simon Murphy (Law Society president), Nicola Kelly (outgoing secretary), Noelle Cantrell, Martin Mulligan, Sinead Creighton and Stephen Reel. (*Middle, l to r*): Rory O'Hagan, Aoife McGuinness, Barry Callan, Elaine Grills, Emer Hall, Sheila Maguire, Una Lyons, Caroline McArdle, Niall Lavery, John Kieran, James MacGuill, Catherine Allison, Seamus Roe, Michael Allison, Brendan Walsh, Ciara Hughes, Paula Tiernan, Ciara Maguire and Catherine Berrills. (*Back, l to r*): Keith Walsh, Donal O'Hagan, Eithne Harte, Roger MacGinley, Olivia McArdle, Frank McDonnell, Don McDonough, Tom Hardy, Niall O'Hagan, Sharon McArdle, Richard McDonnell (PRO), Brian Berrills and Gary Matthews

City of Tribes hears first-hand about the new LSRA



The Galway Solicitors' Bar Association met in the courthouse on 18 February. President of the Law Society Simon Murphy and director general Ken Murphy addressed the gathering about how the new *Legal Services Regulation Act* will work in practice. This year's GSBA committee members are James Seymour (president), David Higgins (vice-president), Cairbre O'Donnell (treasurer), John F Martin (PRO) and Ian Foley (honorary secretary). (*Front, l to r*): Louisa McKeon, Cairbre O'Donnell, Simon Murphy (president, Law Society), Ken Murphy (director general), James Seymour (president, GSBA) and Fionnuala Leahy. (*Back, l to r*): Michael Ryan, Ian Foley, Una O'Donnell, Davitt Geraghty, Gerard O'Donnell, Paschal Mullery, Peter Allen, John Martin, Martin Kerrigan, Tom McLoughlin and Niamh Kavanagh

SADSI soars at *The Irish Times* Student Debate



PIC: NICK BRADSHAW



The Solicitors' Apprentices' Debating Society of Ireland has won the grand final of *The Irish Times* Annual Student Debate, which took place at the Royal College of Surgeons, Dublin, on 19 February 2016. Prof Brent Northup (chair of Communications at Carroll College, Montana) congratulates team winners Ross O'Mahony and Aaron Vickery (both SADSI) and individual prize-winner Clíodhna Ní Cheileachair (UCD L&H)

In full flight – Aaron Vickery (SADSI) argues passionately at the grand final of *The Irish Times* Annual Student Debate

Bringing Street Law to Stanhope Street



Pictured at the Law Society with teachers and transition year students from St Joseph's Secondary School, Stanhope Street, are Law Society PPC1 volunteers Aisling Ray, Naomi Pollock and Lisa Quinn O'Flaherty

The most recent Street Law Programme concluded with a series of mock trials with participating schools. Now in its third year, this Diploma Centre initiative places PPC1 trainees in secondary schools where they teach a six-week Street Law Transition Year programme.

A total of 38 PPC1 volunteers were involved, with over 500 transition year students taking part in 14 DEIS schools throughout Dublin.

Street Law originated in Georgetown University (USA). The Law Society is fortunate to partner with Prof Rock Roe and

his team on this programme. Participating trainees attend an orientation weekend facilitated by Georgetown experts in advance of their school placements.

Trainees learn about the unique activity-based, learner-centered Street Law methodology. This is emphasised through the tag

'Talk less, teach more'. Street Law aims to teach relevant law-related content, focuses on law that is useful in students' daily lives, the legal processes involved, constitutional principles and the values on which these are based – all taught in an engaging and interesting manner.

Irish lawyers and the rule of law in newly democratic Myanmar

In September 2015, I responded to a notice in the *Law Society Gazette*, advertising a volunteer opportunity with *Irish Rule of Law International* (IRLI) in Myanmar, writes *Aisling Woods* (solicitor with Howard Synnott Solicitors). IRLI is the joint charity of the Law Society and the Bar of Ireland, with a focus on strengthening the rule of law in the developing world.

A team of Irish lawyers was being put together, led by Freda Grealy (head of the Law Society's Diploma Centre) to support the work of local NGO 'Bridges Across Borders South East Asia Community Legal Education' (BABSEACLE) in its community legal education work, and specifically Myanmar's second annual National Mock Trial Event, held in Yangon in February 2016.

I was excited, then, to join the team of volunteer solicitors and travel to Myanmar to work with BABSEACLE in early February. The team included Pat MacGonagle (McGonagle Solicitors), Lisa Conkey (BLM), Mary Clear (Brophy & Martin), Stephanie O'Brien (Office of the DPP), Clara Wallace (McCann FitzGerald) and Rory O'Boyle (Law Society Diploma Centre) to join Freda, who had been based in Myanmar since November 2015 on a six-month sabbatical working with BABSEACLE.

The Community Legal Education Mock Trial Event is a practical learning experience for both law students and their teachers, which gives them the opportunity to improve their legal skills and their understanding of values and professional ethics.

Legal education in Myanmar is very traditional, with little opportunity for skills-training, and many of the teachers do not have practice experience. Indeed, many lawyers in Myanmar who have been practising for years may have had little opportunity to experience a courtroom that values concepts such as due process in this once military-controlled nation.



Irish and Myanmar facilitators at the second annual National Mock Trial Event in Yangon, Myanmar

During our time in Myanmar, the Irish lawyers divided up and supported BABSEACLE to provide additional training workshops to various legal aid centres. Freda and Rory facilitated a workshop in the Mawlamyaing

Justice Centre on the ethical practice of client-centred lawyering with director Bruce Lasky. Stephanie O'Brien, Mary Clear and I travelled nine hours to Mandalay with BABSEACLE directors Wendy Morish and

Helen Yandell to the local Rule of Law Centre.

This workshop was geared toward improving the skills of legal education teachers who travel to rural communities and teach residents about issues affecting their communities. This encourages capacity building, raises awareness of the values of the legal profession, promotes access to justice, and creates awareness of social justice issues.

Big changes are happening in Myanmar. Aung San Suu Kyi's National League for Democracy (NLD) won a landslide victory in the November 2015 general elections, bringing to an end the dominance of the military. This means that the NLD will now be able to form a government – the first administration not selected by the military establishment since the 1960s.

Come together, right now

Are you ready to help the homeless again this year? Last May saw the 17th year of the Calcutta Run – the Legal Fundraiser. Over 1,100 took part and a whopping €164,000 was raised for the Peter McVerry Trust and GOAL, in aid of homeless youths in Dublin and Calcutta.

This year's Calcutta Run will take place on Saturday 21 May. Why not try beating your personal best, or if you're not an avid runner, why not walk the 5k or 10k route?

You are encouraged to start training now. We have helpful training plans and nutritional and sports injury advice at www.calcuttarun.com.

Both the 5k and 10k courses start and finish at Blackhall Place and wind their way through the beautiful Phoenix Park. At the end of the run, participants will be able to relax and enjoy the Finish Line Festival, which



Goal's Calcutta kids say 'thanks'!

includes a barbecue, bar, DJ and family fun day on the grounds of Blackhall Place.

You can support the Calcutta Run by becoming a supporter firm or by putting together a team for the DX Team Challenge. All information can be found on the website. You could set up a

personal fundraising page at idonate.ie. Just click 'yes' to the fundraising page question while registering and a profile will automatically be set up for you. It's that easy!

The homeless need your support. Sign up today at www.calcuttarun.com.

letters

War memorials and the fight for Irish freedom

From: Frank MacGabbann,
solicitor, Skerries, Co Dublin

Ciaran O'Meara's article about that poor unfortunate apprentice Jasper Brett, who committed suicide after returning from WWI (November 2015, p26), laments that, as a result of his suicide, his name is not inscribed on that (to my mind) truly awful war memorial that says that "they sought the great prize of death in battle" – not for their friends, as Mr O'Meara states, but for "King and Empire". He impliedly mentions me in his article, as I wrote the letter to the *Gazette* (March 2003, p7) objecting to its being put back on public view for lawyers to shudder silently as they passed by it.

I plead guilty to not being 'mature' in believing that those lawyers (and others) who fought for their own country's independence should be placed on a higher plane than those who fought for an empire that was brutalising peoples all over the globe.

To my mind, Mr O'Meara should lament that the Law Society in 1914, as he states, actually "encouraged the recruitment" of young apprentices and, therefore, was complicit in their senseless deaths. Has the Council of the Law Society formally apologised for this?

Where is the memorial to William Corrigan, the solicitor Volunteer who was sentenced to death but reprieved, and the other lawyers who fought for their own country's freedom during the 1916-1921 period? Where is their memorial? Where is the memorial to the Four Courts Garrison of the Irish Volunteers who fought there in 1916? Where is their memorial?



LawCare is there to help

From: Mary Jackson, LawCare
coordinator for Ireland

I refer to the article on suicide prevention in the *Gazette* (November, p24). I write in my capacity as the CEO of LawCare, a charity that provides support for lawyers across Britain and Ireland. LawCare is partly funded by the Law Society of Ireland, but is completely independent of it.

LawCare is unique, in that it is a helpline service that is both free and, more importantly, confidential. Its *raison d'être* is to help lawyers to work and live better, surrounded as they are by competing pressures, both professional and personal.

Lawyers ring our helpline or email our website with all kinds of issues, ranging from having a bad day, feeling overwhelmed, and struggling to

cope financially, to just feeling isolated and alone. They are all too aware of the stigma and finger-pointing that may arise when finally there is an admission of inability to cope.

As the article said, "solicitors become social workers, confessors, marriage counsellors, interventionists ... based on the intention to help their client in the best way possible". Given the typical 'type A' legal personality and the problem-solving demands of the job, this can leave lawyers exposed to higher chances of anxiety and depression where mental health is compromised.

So, while the thrust of the excellent article was all about supporting the very important bill on suicide prevention, what I would like to emphasise is that LawCare is here – 365 days a

year – to support the solicitors who are solving society's legal problems. We aim to encourage and give hope when things get too much.

An Irish solicitor phoned our helpline a few years ago, repeating over and over again: "Am I the only one in this position?" He had accumulated big debts, lost his job, and was going out every day in his suit, as he did not want his family to know, keeping up appearances. With help from LawCare, a volunteer, and the Solicitors Benevolent Association, he got back on the right track.

So this is a reminder of our service – free, confidential and available to all lawyers, their staff and families. See www.lawcare.ie, helpline: 1800 991 801.

Insurance industry 'disingenuous' on costs

From: Richard E McDonnell,
Richard H McDonnell Solicitors,
Ardee, Co Louth

Defending the solicitors' profession can be difficult in the face of the constant attacks on it by the media, politicians, and the insurance industry. It is notable that, whenever the most vocal critics from the media and politics have legal difficulties of their own, the first place they run to is their solicitor's office. Never is reference made to the huge amount of *pro bono* work done by solicitors (especially outside of Dublin) on a daily basis, or the fact that local authorities, banks, and virtually every public sector office seem to require a customer's solicitor to confirm everything (for example, that an applicant for local authority housing is separated and living apart from his spouse – though how we are supposed to know that is beyond

me) before they will process anything.

As for the insurance industry, I would like to draw your readers' attention to some significant factors that I believe have contributed in no small measure to their declining profits and, therefore, to the significant increases in recent times in the cost of motor and other insurance. The spokespersons for insurers (and, indeed, the Injuries Board) are quick to blame 'the lawyers' and 'legal costs' for this, but they are being very disingenuous. Legislation that came into effect last year requires insurance companies to repay to the State certain illness-related social welfare payments from compensation awards made to persons as a consequence of personal injuries claims. Prior to that, insurance companies insisted on deducting from a loss-of-earnings claim of someone injured

in an accident (as a result of their insured's negligence) illness-related social welfare payments received by that claimant, which, of course, was fair enough – except that the insurance industry kept those deductions for themselves and never refunded the Department of Social Welfare.

Now that they have to do so, millions of euro must be refunded annually to the exchequer, which has, of course, hugely impacted on the profits of the insurance industry. Another development in the past couple of years is the hostile and very aggressive manner in which insurance companies now deal with the claims of people injured in accidents, even where the accident was entirely the fault of a third party. Every claimant seems to be viewed, at best, as exaggerating their injuries or, at worst, as a fraudster. They increasingly hire private investigators (at great expense) to

spy on claimants whose injuries are not especially serious. Huge sums of additional costs are generated by this policy on needless discovery and other court applications, all designed to try to catch out a claimant with an inconsistency or mistake (whereby, for example, a claimant may have complained of a sore back to their GP ten years previously but had forgotten about this many years later, which is then triumphantly pounced upon by the insurer as a way to discredit the claimant). Liability is often strenuously denied and contested (thus necessitating the engagement of consulting engineers by both sides) as a tactic to soften up a plaintiff, only to be conceded 'on the steps of the court'.

So, next time you hear a spokesperson for the insurance industry (or a politician or a media star) blame 'the lawyers' for everything, spare us a thought.

Time to take a stand against unfair water charges collection legislation?

From: Michael O'Dwyer, Early
& Baldwin, Solicitors, Fairview,
Dublin 3

As a solicitor with a considerable amount of experience in dealing with conveyancing work, having qualified as far back as 1986, I have serious concerns about the obligations and ramifications imposed on vendors' solicitors by the implementation of section 48 of the *Environment (Miscellaneous Provisions) Act 2015*.

It is quite clear, to put it mildly, that there is serious opposition to water charges in this country, and it is most unfair to drag solicitors into that conflict. To me, it beggars belief that a solicitor is supposed to tell his client that (s)he will have difficulty acting in a sale if the vendor does not wish to pay water charges in regard to the property being sold, whether as a matter

of principle or otherwise.

The question of the payment or non-payment of water charges should not be a matter for solicitors to become involved in, but rather should be treated in the same way as the payment of other utilities, such as gas and electricity. It should be up to Irish Water to pursue or not to pursue, successfully or otherwise, any person or persons who they believe to be liable for those charges.

Furthermore, it should not be the responsibility of the solicitor to have to engage directly with Irish Water and seek documentation from them, which might arise in certain circumstances, and to have to furnish them with personal details in relation to the sale of a client's property. God knows, there are enough delays as it is in trying to complete sales of properties without having

this to deal with as well!

Section 48(5) is of particular concern, as it imposes an obligation on the solicitor to effectively collect water charges on behalf of Irish Water and to deduct same from the proceeds of sale. Where is all of this going to end?

For too long, solicitors have been made the soft target, and this is something that should no longer be tolerated. I believe that the Law Society should protest in the strongest manner against this.

Indeed, I feel so strongly on the issue that I believe that my colleagues should give serious consideration to taking a stand, not only in regard to opposing this unjust piece of legislation, but also to refusing to cooperate with the implementation of same.

Editor's note: see the practice note on p56.

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viewpoint

WHERE THE WILD THINGS ARE

Can the concept of rights for humans be extended to rights for nature, so that the concept of a right is not confined to humans? **Frank Armstrong** makes the philosophical leap into 'wild law'



Frank Armstrong is a barrister and has written extensively on environmental and other issues. He currently teaches property law at Anglo-American University in Prague, where he is now based

We are accustomed to think of a 'right' as an attribute of humankind. There is new legal thinking that suggests that, in the context of modern environmental challenges, it's time to extend that concept.

This year, Ireland has been subjected to some of the worst flooding in living memory, during one of our warmest winters ever. Climatic distortions such as these, which are predicted to become more pronounced, are the product of a climate change attributed to human activities by the overwhelming majority of climate scientists.

The recent *Paris Agreement* (COP21) commits the world's governments to holding average global temperatures to below 2°C of an increase on pre-industrial levels. This should entail a significant reduction in emissions across all sectors. But we may also need fresh philosophical perspectives on the Earth to inform our laws, as we awake to the realisation that our actions exert powerful effects on the natural world.

Alongside and concomitant with climate change is what has been called the 'sixth extinction'. Thus, the World Wildlife Fund estimates that the number of wild animals has halved in just the last 40 years. A range of farming, logging, and mining activities continue to lay waste to remaining virgin habitats. Protecting those remaining – and even restoring others – is also of great importance to human beings, especially in terms of maintaining clean air and water. But alongside human interests, is it time to start considering the rights of multiple forms of life?

The recent floods led to a debate over

dredging along the River Shannon, with farmers' representatives claiming that EU *nature directives* would prevent effective measures being carried out to protect their members. The European Commission denied this, clarifying that the legislation defers in its objectives to the protection of persons and property.

Untrammelled right

This scenario exhibits the limitation of a regime where the biodiversity that abounds on the banks of rivers is not supported by any right to exist. An individual property owner seems to enjoy

untrammelled rights to take such measures as are necessary merely to protect his chattels from flooding.

Yet this elevation of individual property rights may also come at the expense of the wider human community that enjoys tangible benefits from biodiversity, including resilience

against extreme weather events. However, if we envisage that plants and animals can have associated rights, then the problem may be overcome. Individual landowners can still be compensated as the wider community sees fit.

This would entail shifting our understanding of private property guaranteed under article 43 of the Constitution. The "exigencies of the common good" have been amplified considerably since 1937. Moreover, a person's legal ownership of property confers rights, but also gives rise to new duties, suggesting entitlement on the part of the objects of those duties.

Lawyers in the future may be called upon to negotiate the inevitable friction that will occur, especially as we observe the incredible complexity and interdependence of nature. But the

important philosophical departure is to accept that natural objects enjoy rights and that the concept of a right is not confined to humans. We refer to this as 'Earth jurisprudence' or 'wild law'.

Should trees have standing?

In a seminal 1972 work, "*Should Trees Have Standing*", Prof Christopher D Stone explores how such an idea could work in practice. He suggests natural objects could have legal standing by analogy with companies, states, infants, incompetents, municipalities or even universities. He says: "On a parity of reasoning, we should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship ... The guardian would urge before the court injuries not presently cognisable – the death of eagles and inedible crabs, the suffering of sea lions, the loss from the face of the earth of species of commercially valueless birds, the disappearance of wilderness areas."

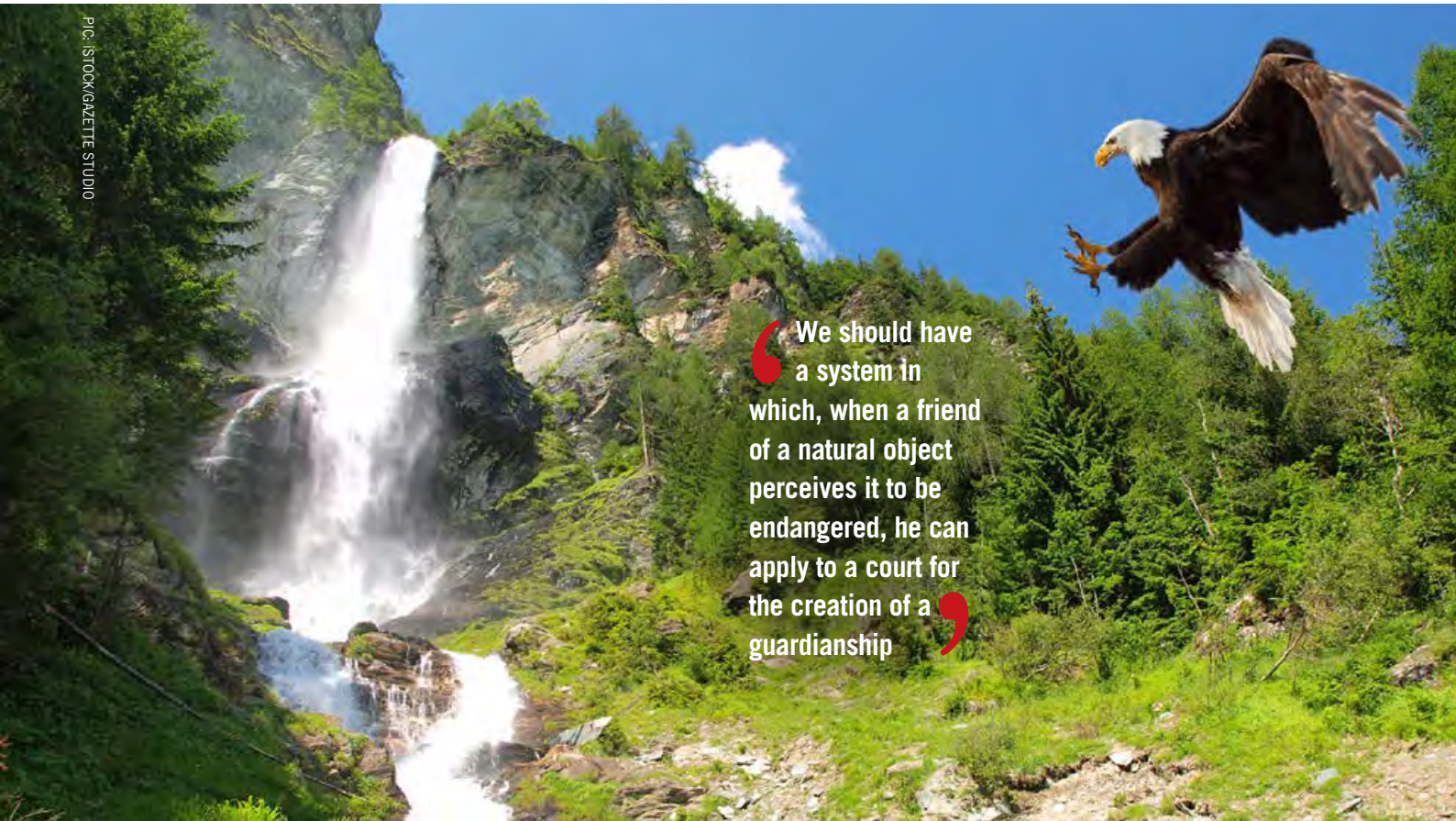
Stone also draws an analogy with the law of patents and copyright: "I am proposing that we do the same with eagles and wilderness areas as we do with copyrighted works, patented inventions and privacy: make the violation of rights in them to be a cost by declaring the piracy of them to be the invasion of a property interest."

He even suggests that this could involve modifications of our representative assemblies: "I am suggesting that there is nothing unthinkable about, and there might on balance even be a prevailing case to be made for, an electoral appointment that made some systematic effort to allow for the representative 'rights' of non-human life."

He envisages that a change in the law would inform wider social norms: "Such a manner of speaking by courts

An idea that law applies to all manifestations of nature may prove important for preserving human beings too

PIC: ISTOCK/GAZETTE STUDIO



“We should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship”

would contribute to popular notions, and a society that spoke of the ‘legal rights of the environment’ would be inclined to legislate more environment-protecting rules by formal enactment.”

Finally he speculates that: “What is needed is a myth that can fit our growing body of knowledge

of geophysics, biology and the cosmos”, and considers that “we may come to regard the Earth, as some have suggested, as one organism of which mankind is a functional part”.

Andean goddess

Such a myth now exists in the shape of Pachamama, a goddess revered by the indigenous people of the Andes that, in September 2008, entered the Ecuadorian constitution. The state and its citizens commit to seeking well-being in a manner that is harmonious with nature. More importantly nature, or Pachamama, is granted a right “to exist, persist, and maintain and regenerate its vital cycles, structure, functions and its evolutionary processes”. A duty is also imposed on all Ecuadorian men and women “to respect the rights of nature, preserve a healthy environment, and use natural resources in a rational, viable and sustainable manner”.

This was followed by a [call from nine countries](#) of the Bolivarian Alliance for the Peoples of Our America on 17 October 2009 for a ‘Universal Declaration of Mother Earth Rights’. It includes the statement that: “Just as World War II caused a serious humanitarian crisis that in 1948 led to the adoption of the Universal Declaration of Human Rights, today we are suffering the enormous consequences of climate change, making it essential to have a *Universal Declaration of Mother Earth Rights*.”

Darwin awards

In the *Descent of Man*, Charles Darwin argues that the history of man’s moral development has been a continual extension of the objects of his “social instincts” and “sympathies”. “Originally, each man had regard only for himself and those of a very narrow circle about him”; later he came to regard more and more “not only the welfare,

but the happiness of all his fellow men”; then “his sympathies became more tender and widely diffused, extending to men of all races, to the imbecile, maimed and other useless members of society, and finally to the lower animals”.

Over time, albeit with significant interruptions, the evolution of the law has reflected this expansion in our sympathies. It seems unthinkable that a father could have power of life or death over his family, as a Roman *paterfamilias* did, or that racial segregation and apartheid could operate again.

Broadening this compassion to encompass the rest of nature is required in an age of impending dangers from climate change and species loss. The great power we now hold imposes weighty responsibilities, and an idea that law applies to all manifestations of nature may prove important for preserving human beings too.

look it up

Literature:

- Stone, Christopher D (2010), *Should Trees Have Standing* (3rd edition; Oxford University Press, USA). The original 1972 version is available at <http://isites.harvard.edu/fs/docs/icb.topic498371.files/Stone.Trees.Standing.pdf>
- Cullinan, Cormac (2011), *Wild Law: A Manifesto for Earth Justice* (2nd edition; Chelsea Green Publishing Co)

viewpoint

THE CONSENT FORM: A MEANINGLESS DOCUMENT?

If a patient is simply presented with a consent form to sign, how can the legal and ethical objectives of consent be served, asks **Doireann O'Mahony**



Doireann O'Mahony is a practising barrister, specialising in medical negligence. She is the author of *Medical Negligence and Childbirth*, published by Bloomsbury Professional

Consent is the mechanism by which the law aims to protect a patient's right to self-determination. Consent issues that arise in the medical negligence context are about the failure to communicate adequately with the patient. Evidently we need a radical review of consent procedures. The obsession with the idea of the consent form and the need to have it signed often provides a distraction from the real business of informing the patient and allowing her to make the choice.

Unfortunately, consent in current medical practice simply equates to the doctor looking over his shoulder at the lawyer, pleading "don't sue me". This stems from the fact that treatment without legal justification is likely to be considered battery in criminal law and trespass to the person in civil law.

The Irish Medical Council advises that doctors "should explain the process in such a way as to ensure that patients do not feel that their consent is simply a formality or a signature on a page". If a patient is simply presented with a form to sign, it loses all significance, as it becomes an undemanding formality that must be complied with for legal purposes.

Patient choice

Consent should always be about patient choice. That choice should be exercised and recorded at a time when the patient has a real opportunity to decline a procedure – not in the ward or, worse

still, on the trolley – the morning of a planned operation. It is important that the patient is allowed time to reflect and, if necessary, change her mind or ask for further information. The emphasis should be on providing the patient with the relevant information for her, so that she understands what is proposed, why it is proposed, and what her options are – rather than bombarding her with information and shoving a consent form in front of her that, before she has even

taken in the information contained on it, she is expected to sign.

Earlier this year, the British Supreme Court in *Montgomery v Lanarkshire Health Board* ([2015] UKSC 11) found in favour of a diabetic mother who alleged that she should have been advised of the risk of shoulder dystocia in vaginal delivery and of the alternative option of Caesarean section and that, had she been so informed, she would have elected for a Caesarean. It was agreed that, had her son been delivered by

Caesarean section, he would have been spared all of the devastating injuries he went on to suffer.

The seven judges unanimously held that "the doctor's advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision. This role will only be performed effectively if the information provided is comprehensible. The doctor's duty is

therefore not fulfilled by bombarding the patient with technical information which she cannot be expected to grasp, let alone by routinely demanding her decision on a consent form."

Fifteen years earlier, Kearns J in *Geoghegan v Harris* ([2000] 3 IR 536) reached that same conclusion: that full disclosure of all material risks to the patient was required, so that it is the patient thus informed – not the doctor – who makes the choice.

Undoubtedly, the single most important obstacle to the proper exercise of patient choice is the consent form. The emphasis is not on the patient's understanding of information, but rather on the doctor's permission to operate. Making sure that the patient consents to the procedure is, of course, important, but problems arise because we have mixed up the issue of recording the patient's consent to the procedure, with recording the advice that they have been given and of the decision to treat them in this fashion.

Too late to change your mind

Most people undergoing elective surgery make their decision weeks before they sign the consent form on the morning of the operation. The trouble with not getting the patient to sign a consent form until she comes into hospital is that the interval means that the counselling, particularly the description of risks that may become the subject-matter of litigation, is recorded as having happened long after the decision was really taken. When the patient is in her theatre gown, anxious about her impending procedure, it is too late realistically for her to change her mind.

The consent form is also confined to decisions to undergo surgical procedures – but decisions not to undergo surgery, or to choose non-surgical options, may have

Problems arise because we have mixed up the issue of recording the patient's consent to the procedure, with recording the advice that they have been given and of the decision to treat them in this fashion

Full disclosure of all material risks to the patient is required, so that it is the patient thus informed – not the doctor – who makes the choice



Pic: iStock

just as many implications. This was the problem in *Montgomery*, where the pregnant mother complained about the failure to offer her a Caesarean section. We have no organised means of recording such patients' decisions – certainly nothing that they are asked to sign.

In recognition of the similar difficulty posed by the consent form in Britain, as highlighted by *Montgomery*, there has been a proposal that it be replaced with a 'decision record', which is currently being piloted in certain areas.

The decision record would have various sections. The first would contain a description of the presenting problem, recording those parts of the clinical history and

findings on examination that are relevant to the decision. The second section would record the expected benefits. The third section would describe the disadvantages of the procedure. The fourth section would discuss alternatives that the doctor advises the patient to consider. A copy of the decision record would be given to the patient, with a copy for anyone else that they wish to involve in the process.


At the next attendance, there would be follow-up of what had already been done in a fifth section. When the patient comes into hospital, the sixth section would be addressed, dealing with any further questions that the patient wishes to raise with the surgical team, and

recording the fact when there are none.

The form would then be signed as a decision record, not of the self-evident fact that the patient consented to treatment or that the doctor mentioned a risk, but that the autonomous patient has gone through a decision-taking process, considering and recording the benefits and disadvantages that have been described, and has decided to go ahead.

There would also be a seventh section, in which both parties compare the outcome with their expectations at a post-operative clinic, providing an audit of the doctor's outcomes and powers of communication.

Sometimes a patient will change her mind as a result of the process, and the decision record could still usefully be added to the permanent record as an account of the path not chosen.

It is high time we reviewed consent in the medical negligence context. If a patient is simply presented with a form to sign, how can the legal and ethical objectives of consent be served? Perhaps it is time to replace the consent form, not with another meaningless document, but with a mechanism that would actually ensure that patients who sign on a dotted line are not just complying with formality, but are truly giving consent. 

news in depth

IN THE PUBLIC EYE

A recent survey of the public by the Law Society looked at attitudes of the Irish adult population towards solicitors and the Society. **Teri Kelly** reveals some interesting findings



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

Before Christmas, the Law Society commissioned research company RED C to survey the attitudes of the Irish adult population towards solicitors and the Law Society. The research is the result of a telephone survey of a nationally representative sample of Irish adults.

The results have given us new insights into a range of important issues, with lessons for both the profession – in terms of driving business to your own firm – and the Law Society. Importantly, we have uncovered some significant gaps in understanding among the public in relation to the various benefits and the protections when using a solicitor, in relation to regulation, PII and the compensation fund.

Frequency of use

According to the research, 72% of the adult population have used the services of a solicitor at some point in their lives. The majority of the public – 57% – use a solicitor every few years, while 9% use a solicitor once a year, and 6% use a solicitor multiple times in a year. Men are more likely to use a solicitor multiple times a year or once a year compared

with women. As one would expect, younger age groups are more likely to have never used a solicitor.

Solicitor use appears to be least frequent in Connaught and Ulster, with 23% reporting that they have never used a solicitor. The most frequent users live in Leinster outside Dublin, with 32% of this group using a solicitor multiple times a year. Those in Munster also registered high levels of solicitor use, with 34% using a solicitor once a year.

Client satisfaction

The research has provided us with some very positive results relating to client satisfaction. Chief among these is that the public reports high levels of satisfaction with their own solicitor. The research shows that 78% of clients are satisfied with the overall service delivered by their solicitor, with just 13% stating that they were dissatisfied. When asked specifically about whether they were satisfied with the

quality of advice offered by their solicitor, 77% indicated they were satisfied, while only 12% indicated that they were dissatisfied.

These figures are promising, but what is most heartening is that a full 80% of the public are satisfied with how

trustworthy their solicitor is. We know that people turn to solicitors for help at critical points in their lives. They may be having difficulties in the workplace, buying or selling a home, arranging a will to protect their loved ones, dealing with family breakdown or appearing in court. These are matters that are highly confidential, personal and sensitive.

It's essential that when facing these challenges, people have someone in their corner they can trust.

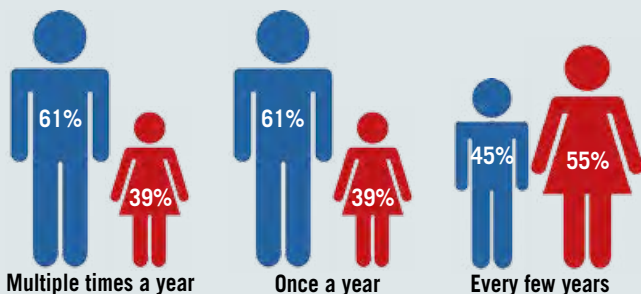
Choosing a solicitor

Some of the most interesting results of the survey relate to the factors influencing the choice of solicitor.

The majority of the public – 57% – use a solicitor every few years, while 9% use a solicitor once a year, and 6% use a solicitor multiple times in a year

SOLICITORS: FREQUENCY OF USE

(Base: All adults 18+; n=1,007)



While over seven in ten adults have ever used the services of a solicitor, the majority do so infrequently (every few years). Males tend to use solicitors more often than females.

Age	Multiple times a year	Once a year	Every few years
18-24	8%	6%	3%
25-34	19%	24%	16%
35-44	22%	21%	23%
45-54	18%	19%	22%
55-64	15%	9%	18%
65+	18%	21%	18%





PICT: ADOBE STOCK

Three factors mainly influence that choice:

- Recommendation/word of mouth (43% of the public choose their solicitor this way),
- Family solicitor (28%), and
- Good reputation (24%).

Clearly, when choosing a solicitor, the most important factors for the public are what others have reported about the quality of the solicitor, or direct knowledge of the solicitor through family experience. The importance of providing exceptional client care for current clients – to both drive future business with them and with that individual’s network of friends and family – has never been clearer.

What is surprising about these results is that other factors, which one would have previously thought to have more influence on the public’s choice of solicitor, are far less important. A close location to

home or work is important to 19% of the public, while reasonable fees are important to just 10%. That’s not to say these factors are unimportant. Indeed, if many solicitors offer a convenient location and reasonable fees, it may

be a recommendation and the reputation of the solicitor that becomes the most important factor.

More surprising is the apparent lack of influence from marketing in relation to the public choosing a solicitor. A very small proportion of the public identified advertising (2%) or a website/online search (2%) as factors influencing their choice

of solicitor. Again, that is not to say marketing is unimportant; however, it is eclipsed by the three main factors related to recommendation, family and reputation.

Lessons learned

The survey also contained questions related to awareness of the Law Society and its role. While 79% of the total population are aware

When choosing a solicitor, the most important factors for the public are what others have reported about the quality of the solicitor

FACTORS INFLUENCING CHOICE OF SOLICITORS



Four factors mainly influence the choice of solicitor: recommendation/word of mouth, family linkage, perceived reputation and convenience of location. One in ten clients makes a specific reference to choice being influenced by reasonable fees.



LAW SOCIETY ANNUAL CONFERENCE

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David Walsh, award winning investigative journalist with the *Sunday Times*: 'The Lance Armstrong case – how I uncovered the most controversial doping case in sport'.

Valerie Mulcahy, Senior Cork GAA Football Champion 2015: 'Let's level the playing field – challenges for equality in Irish sport'.

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€225: One night's B&B accommodation (Friday 15 April) sharing with a delegate, Black Tie Gala Dinner on Friday 15 April, light lunch on Friday 15 April and Saturday 16 April.

ADDITIONAL NIGHT: €140 per single room B&B, €155 per double/twin room B&B.

Family services include complimentary crèche facilities available on-site during CPD sessions.

Rooms in Fota Island Resort available on a first come, first served basis. Additional accommodation will be available at nearby Castlemartyr Hotel.



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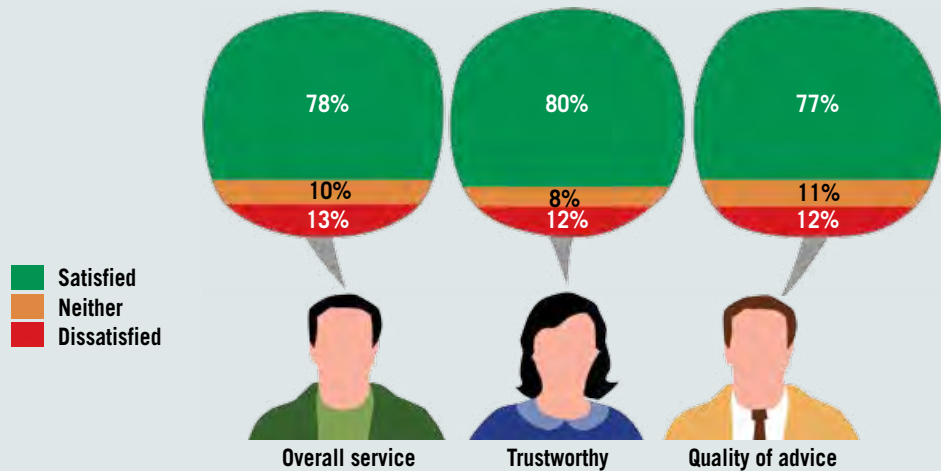
of the Law Society, awareness is highest among those who have used a solicitor, at 86%.

Awareness figures of the total population are highly skewed by age, however. Only 41% of 18 to 24-year-olds are aware of the Law Society, compared with 96% of 55 to 64-year-olds. Part of the reason for this gap is that younger members of the public are less likely to have used a solicitor. Still, we now know that the Law Society has a job to do to increase awareness of the Society and our role among younger people. Our social media channels will be key here.

One of the most significant revelations from the research is that a surprisingly small proportion of the public understand the protection provided to them by the Law Society's compensation fund. In fact, only 32% of the public understand that, in the highly unlikely event that they lose money as a result of solicitor dishonesty, the Law Society will reimburse them through the compensation fund.


Clients benefit from extra protections every time they use a solicitor. These include cover by the Law Society's compensation

SATISFACTION WITH SOLICITOR USED



Just under four in five state satisfaction with the overall service delivered by their solicitor, with the same proportion registering satisfaction with trustworthiness and advice quality. Three in five record satisfaction with the cost of solicitor services, with room for improvement on this figure.

fund, professional indemnity insurance cover, legal professional privilege, high professional and educational standards of the solicitors' profession, and overall regulation by the Law Society.

It is important that the public understand these benefits and protections available every time they use a solicitor, and the Law Society will be focusing on efforts to increase that understanding. 

AWARENESS OF THE LAW SOCIETY AMONG CLIENTS



LEGAL EZINE FOR MEMBERS

The Law Society's *Legal eZine* for solicitors is now produced monthly and comprises practice-related topics such as legislation changes, practice management and committee updates.

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AN BORD UM CHÚNAMH DLÍTHIÚIL



LEGAL AID BOARD

Solicitors Panel for Home Mortgage Arrears Scheme

A Scheme was announced on 22nd January 2016 by the Minister for Justice and Equality to help people who are insolvent and in mortgage arrears on their home, to access independent financial and legal advice. This Scheme is co-ordinated by the Department of Justice and Equality and the Department of Social Protection, in co-operation with relevant agencies including the Money Advice and Budgeting Service (MABS) (which will act as the gateway for people to access advice under the Scheme), the Insolvency Service of Ireland, the Citizens Information Board and the Legal Aid Board. The Legal Aid Board is now establishing a panel of solicitors willing to provide the following services to persons eligible for the Scheme:

- A Solicitor Consultation Service;
- A Duty Solicitor Service; and
- A Personal Insolvency Arrangement Review Legal Aid Service.

Copies of the application form and the terms and conditions of the Panel are available on the Board's website (www.legalaidboard.ie). The terms and conditions include the fee structure that is being put in place by the Board.

The Board wishes to have a limited number of solicitors on the Panel and selection for the Panel will be based on the applications received. The Board also reserves the right to interview solicitors for the Panel and to further limit the number of solicitors who will participate in the Duty Solicitor Service and Personal Insolvency Arrangement Review elements of the Scheme.

Solicitors must participate in training provided by the Board before they can be placed on the Panel.

Solicitors selected for the panel will be expected to comply with the Board's Best Practice Guidelines. The Board would be pleased to receive applications from solicitors with a real commitment to the work.

To apply submit a completed application in the format provided by e-mail (typed applications only) to solicitorspanels@legalaidboard.ie. **Solicitors should note a training event has been provisionally arranged for 8th April in Dublin and should submit their application by 31st March 2016 or earlier if they wish to reserve a place at this event.** While applications may be made after this date, solicitors will not be entered onto the panel until they have participated in training. Further training will be arranged at the Board's discretion.

human rights watch

IRISH COURTS RELY HEAVILY ON EU CHARTER AND ECHR ACT

Last year, a report on the impact of the *European Convention on Human Rights Act 2003* and the EU Charter of Fundamental Rights on Irish case law was launched. **Michelle Lynch** reports



Michelle Lynch is policy development executive at the Law Society and secretary to the Human Rights Committee

In 2015, the Law Society and the DSBA commissioned a report on the impact of the *European Convention on Human Rights Act 2003* and the *EU Charter of Fundamental Rights* on Irish case law. The report was published online in July 2015 and was formally launched at the Annual Human Rights Conference on 10 October at Blackhall Place.

The opening chapter provides an overview of the level of engagement with the convention and charter by the Irish court, relevant tribunals, and the Irish Human Rights and Equality Commission between 2004 and 2014.

It found that articles 6 and 8 of the ECHR are the most referenced rights protections before the Irish courts, and immigration and criminal law are the areas where European rights provisions are most frequently referenced by either counsel or the judiciary.

Compulsory jurisdiction

An overview of core provisions of the convention and the 2003 act, the role of the European Court of Human Rights (in developing standards of interpretation, and Ireland's record before the court is provided in chapter 2. In chapter 3, horizontal issues relating to common themes that cut across a number of significant areas of convention-related jurisprudence are explored, including the relationship of the convention and the act to the Constitution, interpretative obligations under the act, retrospectivity, declarations of incompatibility, and damages and other remedies under the 2003 act.

Chapter 4 involves a sectoral review of some key legal areas where the Irish courts and quasi-judicial bodies/tribunals have engaged with rights that are protected under the convention and the *ECHR Act 2003*, including the



Shane McCarthy (vice-chair of the Human Rights Committee), Grainne Brophy (chair), co-authors Dr Suzanne Kingston and Dr Liam Thornton (UCD), and Aaron McKenna (then DSBA president)

areas of mental health law, asylum and immigration law, criminal law, family and child law, and social and employment rights.

A background to the charter, its scheme and content, and a comparison of the status of the charter and the convention in the Irish courts is given in Chapter 5, while chapter 6 examines the charter before the Irish courts, reviewing the case law on a number of cross-cutting issues. In particular, the Irish courts' consideration of the applicability of article 51 of the charter is examined.

Sectoral developments of charter jurisprudence in the Irish courts, in the fields of asylum and immigration law, the European arrest warrant, data protection law, family law, companies' rights and social and employment rights are reviewed in chapter 7.

The final chapter seeks to draw

together some key conclusions in relation to European rights as applied in the Irish courts and tribunals. One of the central observations drawn was a significant engagement with European rights in Irish courts, with increased reliance on the charter, while convention arguments have remained relatively stable over a ten-year period.

In addition, an annex provides an extensive list of decided cases in which either the convention, the *ECHR Act 2003*, or the charter have been pleaded. This enables a detailed and highly accessible exploration of the potential of both the act and the charter in litigation.

The report and annex are available to view online under the 'resources' tab of the Human Rights Committee's page on lawsociety.ie. Hard copies are available to order for €28.25, including P&P.

Show me the



Helen Kehoe is policy development executive at the Law Society

MONEY

Eradicating money laundering and terrorist financing has become a priority for legislators and policymakers, and the focus on its prevention and detection looks set to intensify considerably, writes

Helen Kehoe

The Financial Action Task Force (FATF) – the international body concerned with setting standards for anti-money-laundering (AML) and combatting terrorism financing (CTF) – has recently renewed its focus upon terrorist financing. It issued a report in October 2015, *Emerging Terrorist Financing Risks*, and a report to G20 leaders entitled *Actions Being Taken by the FATF* in November 2015.

Their report, *Emerging Terrorist Financing Risks*, notes that, while “the number and type of terrorist groups and related threats have changed over time, the basic need for terrorists to raise, move and use funds has remained the same”. It also observes that the methods or techniques used to accommodate this financial need have evolved. As a result, while traditional methods of raising moneys to fund terrorism continue to be used, there are also new “significant vulnerabilities” identified by FATE. These new methods are “associated with social media, including anonymity, access to a wider range and number of potential sponsors or sympathisers, and the relative ease with which it integrates electronic payment mechanisms”.

In relation to the traditional methods of raising funds, the report states that “the adaptability of

at a glance

- The Financial Action Task Force has identified significant vulnerabilities in countering the funding of terrorism
- EU member states have been asked to expedite transposition of the fourth *Anti-Money-Laundering Directive*
- Ireland will be reviewing its efforts to counter the financing of terrorism, in light of FATF’s upcoming ‘mutual evaluation’ in 2016/17
- FATF will issue a mutual evaluation report containing its observations and recommendations on how the Irish system could be strengthened





In combatting terrorist financing, the obligation on designated persons is to report any suspicious activity of their clients to the authorities

these organisations, and new threats posed by foreign terrorist fighters and small-cell terror networks, require authorities to monitor how these traditional methods continue to be used”.

Traditional methods of raising funds encompass a spectrum of legitimate and illegitimate sources. Legitimate sources include, for example, charitable entities or legitimate businesses and self-financing by the terrorist(s). Illegitimate funds can, in turn, be acquired through criminal activities, varying in both sophistication and scale (see FATF's *Terrorist Financing Typologies Report 2008* for more detail).

The FATF report to G20 leaders strongly emphasised that urgent legislative action was needed across all states to “address significant gaps and weaknesses in their systems – such as excessive delays in applying sanctions nationally”.

After the terror

On 2 February 2016, the European Commission called on member states to expedite transposition of the fourth *EU Anti-Money Laundering Directive*, as part of its *action plan* to strengthen the fight against terrorist financing – the commission's “strong and swift response” to the issue. The action plan includes, among other things, proposals to introduce amendments to the fourth directive, making it likely that a fifth *AML Directive* will follow during 2016.

It seems possible that such heightened levels of supranational activities and concern regarding how best to combat terrorist financing could lead to further obligations being imposed on designated professionals, including the legal profession, or lead to current statutory obligations being enhanced.

Finally, it is likely that Ireland will review its efforts to counter the financing of terrorism, in light of its upcoming FATF mutual evaluation in 2016/17. This will see Ireland examined by FATF evaluators in relation to the AML and CTF systems in place (that is, the level of compliance with FATF standards and the efficacy of the systems in place).

At the conclusion of the process, FATF will issue a ‘mutual evaluation report’ containing its observations and recommendations regarding how the Irish AML/CTF system could be strengthened. All members of FATF are required to undergo this process at periodic intervals.

Money talks

Money laundering is a process whereby the proceeds of crime are changed (‘washed’), so that the money appears to come from a legitimate source. It forms a crucial part of

most criminal activity, and is also used to raise funds for the financing of terrorism.

The Law Society's *Guidance Notes for Solicitors on Anti-Money-Laundering Obligations* highlight the connection between money laundering and terrorist financing in a similar manner to the FATF reports on terrorist financing; however, they also highlight the practical difficulties presented in identifying such activity (paragraph 2.18): “There can be considerable similarities between the movement of terrorist property and the laundering of criminal property; some terrorist groups are known to have well-established links with organised criminal activity. However, there are two major differences between terrorist property and criminal property more generally:

- Often only small amounts are required to commit individual terrorist acts, thus increasing the difficulty of tracking the terrorist property, and
- Terrorists can be funded from legitimately obtained income, including charitable donations, and it is extremely difficult to identify the stage at which legitimate funds become terrorist property. “

It is clear that the financing of terrorism draws on both legitimate and illegitimate sources of funds, which adds a layer of complexity to identifying such behaviours.

Just and unjust wars

In Ireland, the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013* (AML/CTF legislation) provide the legislative framework for AML and CTF obligations. This legislation is framed almost entirely in terms of assessing the risk of money laundering or terrorist financing.

There are crucial distinctions between the references to ‘terrorist financing’ that depend on the various contexts in which it is mentioned. References to ‘terrorist financing’ in the AML/CTF legislation, for example, is in the context of ‘money laundering and terrorist financing’ and can be distinguished – to a degree – from terrorist financing as contained in the criminal justice (terrorist offences) legislation. Examples of these distinctions are provided in the Law Society's guidance notes (see paragraphs 2.16-2.18 in particular):

- Terrorist financing as addressed in the AML/CTF legislation involves the obligations

of client due diligence and the making of suspicious transaction reports. The broad context is that the AML/CTF legislation aims to prevent money laundering being used to fund criminal activities and terrorism.

- There is a category of EU regulations relating to terrorist financing that contain explicit restrictive measures to be directed against specific persons, groups, and entities. The requirement to monitor various sanctions lists is not included in the AML/CTF legislation.
- There is an offence of terrorist financing *per se*, defined in section 13 of the *Criminal*

Justice (Terrorist Offences) Act 2005, as amended. The act provides for a variety of criminal offences relating to terrorism, such as hostage taking, bombing, recruitment, training, and so on. In essence, the offence of terrorist financing requires a level of intent or knowledge that any provision, collection, or receipt of funds will be used in whole or part to carry out acts of terrorism (the latter acts also defined in section 13 – please see the entirety of section 13 for the comprehensive and wide-ranging definition).

The methods and techniques used by criminals to launder money may also be used by clients with legitimate means for legitimate purposes. Because of this, red-flag indicators should always be considered in context

The guidance notes (paragraph 2.18) outline the potential role of lawyers in combatting terrorist financing: “In combatting terrorist financing, the obligation on designated persons is to report any suspicious activity of their clients to the authorities. This supports the aims of the law enforcement agencies in relation to the financing of terrorism by allowing the placing of a direction or court order not to carry out any specified service or transaction for clients where there are reasonable grounds for suspecting that such property could be used to finance terrorist activity and depriving terrorists of this property as and when links are established between the property and terrorists or terrorist activity.”

In managing the risk of becoming unwittingly involved in money laundering or terrorist financing, solicitors are reminded to be aware of the following (broadly outlined below):

- The risk of committing the substantive offence of money laundering,
- Indicators of suspicion/red flags, and
- The risk-based approach.

For a detailed consideration of these issues, solicitors should review the Law Society's guidance notes.

Family resemblance

The offence of money laundering is broadly defined in the AML/CTF legislation – in fact, the definition encompasses more than the traditional concept of money laundering. This is primarily because it includes the mere possession, acquisition, or use of property, while knowing that such property is derived from the “proceeds of criminal conduct”, but without requiring any objective or intent to ‘cleanse’ the asset.

Additionally, tax offences are not in a special category: the proceeds of a tax offence are treated as proceeds of crime and may be the subject of money-laundering offences under the AML/CTF legislation.

As regards the ‘knowledge’ element of the offence, it includes actual knowledge as well as what the person ought to have known – that is, “the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct”.

Chapter 2 of the guidance notes is particularly relevant, as it describes the substantive offence, knowledge elements, and the risks for solicitors transferring assets that might be tainted.

It must be borne in mind that “penalties for money-laundering offences include imprisonment for up to 14 years”.

War of the flea

Solicitors should familiarise themselves with the non-exhaustive list of red flags provided in chapter 9 of the guidance notes.

By way of example, this chapter lists red flags regarding:

- Transactions involving unusual levels of funds,
- Transactions involving areas outside Ireland,
- Transactions related to offshore business activity,
- Property transactions,
- The use of client accounts,
- The need for a cash handling policy,
- The importance of monitoring the source of funds, and
- The need to exercise care when disclosing account details, and so on.

Regarding red flags, the *FATF Report on Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals* states as follows (p77): “The methods and techniques used by criminals to launder money may also be used by clients with legitimate means for legitimate purposes. Because of this, red-



Back in the day, terrorist financing was based on the ‘proletarian expropriation’ model. Or robbing banks

flag indicators should always be considered in context. The mere presence of a red-flag indicator is not necessarily a basis for a suspicion of ML or TF, as a client may be able to provide a legitimate explanation. These red-flag indicators should assist legal professionals in applying a risk-based approach to their CDD requirements of knowing who their client and the beneficial owners are, understanding the nature and the purpose of the business relationship, and understanding the source of funds being used in a retainer. Where there are a number of red flag indicators, it is more likely that a legal professional should have a suspicion that ML or TF is occurring.”

Urban guerrilla

As stated previously, the AML/CTF legislation is framed almost entirely in terms of risk – that is, what is termed the ‘risk-based approach’ to AML/CTF.

Regarding the risk-based approach, the guidance notes provide the following best practice guidance (paragraphs 1.24-1.25): “These risks must be identified, assessed and mitigated, just as a solicitor would do for all business risks facing their firm. If a solicitor knows his/her client well and understands their instructions thoroughly, the solicitor will be better placed to assess risks and spot suspicious activities. Applying the risk-based approach will vary between firms. While a solicitor can, and should, start from the premise that most clients are not launderers or terrorist financiers, the solicitor should assess the risk level particular to his firm and implement reasonable and considered controls to minimise those risks.


“Solicitors are not expected to be detectives and should:

- Make a reasoned assessment of the risks,
- Take reasonable steps to conduct CDD,
- Use their judgement and discuss issues with colleagues,
- Document what they find,

- Be able to demonstrate that they undertook due diligence and took reasonable steps to protect the firm.”

Solicitors may also find it beneficial to review the following international documents about risk and red flags particular to the legal profession: the FATF *Report on Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals* (June 2013), *A Lawyer's Guide to Detecting and Preventing Money Laundering*, a collaborative publication of the IBA, ABA, and CCBE (October 2014).

Solicitors can find all of the above documents, as well as further best practice guidance and information regarding solicitors' statutory anti-money-laundering obligations, on the Law Society's dedicated [anti-money-laundering resource webpage](#).

Solicitors should also bear in mind that, while the Law Society can provide best practice guidance in relation to a solicitor's statutory AML and CTF obligations, it cannot provide legal advice in  relation to these obligations.

look it up

Legislation:

- *Anti-Money-Laundering Directive* (Directive (EU) 2015/849)
- *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010*
- *Criminal Justice (Terrorist Offences) (Amendment) Act 2015*
- *Criminal Justice (Terrorist Offences) Act 2005*
- *Criminal Justice Act 2013*

Literature:

- FATF (2008), *Terrorist Financing Typologies Report 2008*
- FATF (2013), *Report on Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals*
- FATF (October 2015), *Emerging Terrorist Financing Risks*
- FATF (November 2015), *Action Being Taken by the FATF*
- IBA, ABA, and CCBE (October 2014), *A Lawyer's Guide to Detecting and Preventing Money Laundering*,
- Law Society of Ireland (2010), *Guidance Notes for Solicitors on Anti-Money-Laundering Obligations*
- Law Society's dedicated anti-money-laundering resource webpage: www.lawsociety.ie/Solicitors/Regulations/Anti-Money-Laundering

WAKE ME UP

before you go-go



Jim Connolly is head of pensions at Goodbody Stockbrokers. A well-known and outspoken figure on Irish pensions, he was voted 'Irish Pension Personality of the Year' at the Irish Pension Awards

In 1996, the *Family Law (Divorce) Act* was passed here – that was the same year that Di divorced Charles. With divorce and pensions in mind, **Jim Connolly asks: 'Does my ARF look big in this?'**

Despite the fact that we top the EU charts with the lowest divorce rate (0.6%), we've still granted divorces to over 100,000 people since 1996. That's a whole lot of Wham! albums to be fought over. But the record collection isn't where the money lies in a divorce. There is enough evidence to show that, after the family home, the next most valuable asset that most people own is their pension. But there is also enough evidence to suggest that people would rather tidy their sock drawer than take the time to understand more about pensions – and, as such, they don't always get top billing in people's minds. In divorce scenarios, they are absolutely prioritised, but once the pension adjustment order (PAO) has been secured, attention turns back to the vinyl.

Unfortunately for all of us, this casual mentality also seems to have permeated the minds of our legislators, as they seem to have approached the issue of pensions and divorce with a similar degree of 'couldn't-care-lessness'.

We're now in a situation where the square peg of pensions legislation has been rammed into the round hole of family law, with the inevitable result of serious problems for those caught on the edges.

Do not adjust your set – the following tax treatment is actually the way it is.

Careless whisper

The initial legal framework dealt with the distribution of pension assets in divorce quite effectively.

In 1996, the pensions landscape was relatively straightforward – no personal retirement savings accounts (PRSAs), approved retirement funds (ARFs), no maximums on lump sums, no standard fund thresholds (SFTs) and certainly no chargeable excess tax (CET) issues to deal with. Even back then, we thought pensions were complicated – we didn't realise how lucky we were.

The original legislation allowed pension benefits to be divided between the member spouse who owned the benefit and their non-member spouse through a pension adjustment order. This instrument

at a glance

- After the family home, the next most valuable asset that most people own is their pension
- In divorce scenarios, pensions are prioritised
- However, our legislators seem to have approached the issue of pensions and divorce with a *laissez-faire* attitude



“ Divorces have been granted to over 100,000 people since 1996. That’s a whole lot of Wham! albums to be fought over ”

T'PAO



Now there's a pension adjustment order you could live with...

apportions the pension according to a relevant percentage of the benefits accrued during the period of the marriage.

Once a PAO has been awarded, it is the recipient of the order who controls what happens next. They can:

- Simply leave the benefit where it is and, when their ex retires or dies, they will receive their share, or
- They can carve out the benefit and move it to a product in their own name.

As a pension provider and trustee, it is abundantly clear to me when a PAO client has taken advice and when they haven't. It's difficult to give broad-brush advice but, generally, if the PAO relates to a defined-contribution arrangement, the best thing to do is to carve the benefit out – take the money

and run. Leaving it where it is simply leaves it within the control of an ex, where they decide how it is invested and control when the benefit is made available.

Since 1996, the position hasn't actually changed – which is part of the problem, because pension rules have, and these changes have a considerable and potentially negative impact on how the non-member spouse might be taxed.

Where did your heart go?

The story starts to get complicated in 1999, with the birth of the approved retirement fund (ARF). One of the most significant pension changes in decades didn't even make Charlie McCreevy's budget speech

and appeared out of the blue in the budget measures. It was always felt that the initial ARF legislation was premature. Rumour at the time was that it was rushed through to facilitate some high-profile divorce settlements, and this rumour seems to be substantiated by the fact that the tax legislation surrounding it had to be totally revamped in the *Finance Act 2000*.

The ARF didn't really affect the whole divorce arena other than to add a bit of confusion as to whether it fell within the definition of a pension under section 2(1) of the *Family Law Act*. And the answer to that issue is that it doesn't – and as such, a

property adjustment order is a more appropriate instrument to capture ARF assets.

The unintended consequence of the ARF was that it created a mechanism to extract funds from a company, pocket 25% tax-free, and park the balance in a gross roll-up investment – and boy, did the big players take advantage. In one case I know of, an ARF of €100 million was created. And this was after the tax-free cash. If you work the maths out, that means that this individual extracted €133 million from the family business, pocketed

€33 million in a tax-free lump sum, and held the balance in a tax-exempt investment. Nice.

As you can imagine, this activity had to be curtailed and, in 2005, the concept of pension-fund thresholds were introduced. Now, if your fund delivered over €5 million, you would suffer chargeable excess tax (CET). Brilliant: problem solved.

Well sort of – because, as one problematic door slammed shut, another flew open. Our new CET regime didn't thoroughly provide for how one should deal with divorce

Here's a PAO, but don't go spending it all at once because you might have a tax bill of an unknown amount payable at an unknown date in the future, and it's your ex that will determine this because it's the future value of their fund that matters

Problems start here

Family Law (Divorce) Act

Approved retirement funds are born

Standard fund thresholds (SFT) introduced

New tax regime for lump sums

SFT reduced to €2 million and new regime to share CET

1996

1999

2005

2011

2014

situations. The issue didn't get much billing (or sympathy) for the few high rollers that would have been affected by a €5 million threshold but, in 2010 and again in 2014, the standard fund threshold was reduced and now stands at €2 million – a level that brings a far higher percentage of the population into the equation.

Credit-card baby

Up until 31 December 2014, all chargeable excess tax fell on the member spouse.

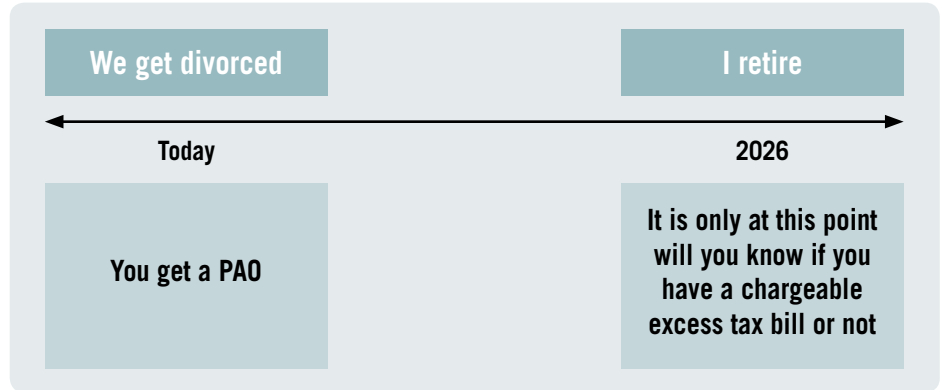
So, in simple terms, say I have a pension fund of €2 million today, we get divorced, you get half, and you take the money into your own product and run. When I eventually retire, a calculation must be carried out to 'guess' what the value of my fund would have been had you not taken your half. Say this calculation results in me having a total notional pension fund of €3 million. I would then incur CET of 40% of the €1 million excess. Ouch.

In an attempt to address this inequity, the *Finance Act 2014* introduced a regime that seems nothing short of bizarre.

Consider the same situation. We split up today (in 2016) and you take €1 million into product in your own name. Say I am age 50, which allows you to actually retire the portion of the fund you have taken. So you sail off into the sunset with a lump sum and an ARF.

In 2026, when I retire at age 60, the administrators of my pension must carry out a calculation to establish what the value of my fund might have been had you not taken half of it ten years earlier. So let's say it works out at the same €3 million above.

Now a second calculation is carried out



to establish how much of this you owe! And because you got €1 million of my €3 million notional fund, you are now the proud owner of one-third of the tax bill.

No, I'm not joking.

A full ten years after we split, you get presented with a whopping tax bill of €133,333 (being one-third x 40% x €1m).

And all of the measures are in place for this to be deducted straight from your ARF.

Maybe it's just me, but this seems to be grossly unfair on the non-member spouse, as we are essentially saying: "Here's a PAO, but don't go spending it all at once because you might have a tax bill of

an unknown amount payable at an unknown date in the future, and it's your ex that will determine this, because it's the future value of their fund that matters."

The interesting thing about this new regime is that the test is only carried out when I trigger my half of the benefit.

If I had given you 100%, then nothing would happen, as I can never trigger part of it.

This presents an anomaly. Instead of me giving you half of my fund, I could split my fund into two separate contracts first, and then give you 100% of one of them. In this case, the entire issue is avoided.

Last Christmas

The solution is to convince the policy and legislation division of the Department of Finance to recognise that PAOs and standard fund thresholds have never worked properly and that we need a drawing board to go back to.

This should culminate in the obvious solution of recognising that each of the parties to a divorce are entitled to their own €2 million threshold and should be taxed accordingly – if I give you €1 million, then you should be limited to accumulating a further €1 million. As it stands today, if I give you €1 million of my €2 million fund, you can still accumulate another €2 million and I have no scope to make any further contributions (without incurring a CET tax bill for you and me!)

Bottom line ... no, your ARF doesn't look that big now!



“ We’re now in a situation where the square peg of pensions legislation has been rammed into the round hole of family law, with the inevitable result of serious problems for those caught on the edges ”

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Keeping it REGULAR



John Elliot
is director of
regulation at the
Law Society of
Ireland

The *Legal Services Regulation Act* will come into operation on days decided by the Minister for Justice – none of it is yet in force. Director of regulation John Elliot provides an introductory overview of key aspects of the act as they apply to solicitors

The *Legal Services Regulation Act 2015* makes sweeping changes to how solicitors and barristers are regulated, creates new legal practice structures, and reforms the law on legal costs. The act establishes the new independent

Legal Services Regulatory Authority to regulate all legal practitioners, and the Legal Practitioners Disciplinary Tribunal to hear disciplinary cases against barristers and solicitors. Other significant changes cover the appointment of solicitors as senior counsel and a pre-action protocol for clinical negligence actions.

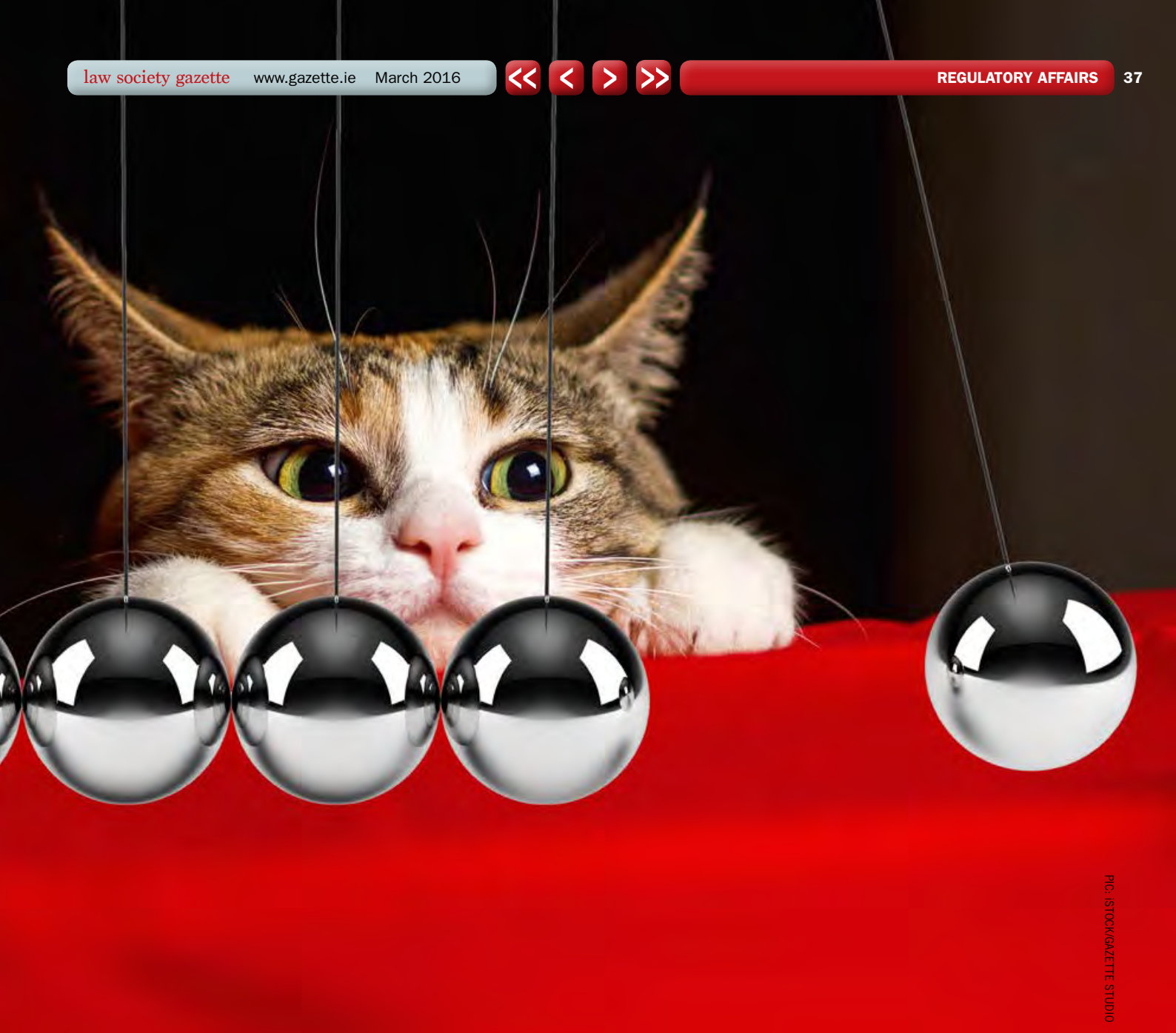
The new authority will regulate both solicitors and barristers. The primary function of the authority is to regulate the provision of legal services by legal practitioners and to ensure the maintenance and improvement of standards in the provision of such services. There will be a new complaints and disciplinary system. The authority will have extensive powers in relation to professional codes, inspections of legal practices, and the advertising of legal services. The authority will be required to prepare reports on many aspects of legal services. The legal professions will be levied to pay for the new system.

The Law Society will continue to issue practising certificates, regulate professional indemnity insurance, maintain the compensation fund, inspect solicitors' firms for compliance with the *Solicitors Accounts Regulations* and anti-money-laundering obligations, receive reporting

accountants' reports, take disciplinary and court cases against solicitors in relation to financial regulatory matters, deal with abandoned solicitors' practices, and continue to handle complaints received before the new complaints system becomes operational.

at a glance

- The *Legal Services Regulation Act* makes sweeping changes to how solicitors and barristers are regulated
- The act continues the prohibition on percentage charging in contentious business, prohibits setting junior counsel costs as a specified proportion of senior counsel costs, and provides that client consent to deduct costs from damages must be prior written consent
- The Law Society will continue to issue practising certificates, regulate professional indemnity insurance, maintain the compensation fund, inspect solicitors' firms for compliance with the *Solicitors Accounts Regulations* and anti-money-laundering obligations, receive reporting accountants' reports, take disciplinary and court cases against solicitors in relation to financial regulatory matters, deal with abandoned solicitors' practices, and continue to handle complaints received before the new complaints system becomes operational



PIC: STOCKGAZETTE STUDIO

New practice structures will include limited liability partnerships, partnerships of barristers, partnerships of solicitors and barristers, and possibly, in due course, multi-disciplinary practices.

The new legal costs system will see an Office of the Legal Costs Adjudicators and replacement of 'section 68'.

Legal Services Regulatory Authority

The authority will consist of 11 members, with a lay majority, appointed from persons nominated by the Citizens' Information Board, the Higher Education Authority, the Competition and Consumer Protection Commission, the Irish

‘ The regulation-making powers of the Law Society will be subject to the approval of the authority ’

Human Rights and Equality Commission, the Institute of Legal Costs Accountants, the Consumers' Association of Ireland, the Bar Council, the Legal Aid Board, the King's

Inns, and the Law Society. Two members are nominated by the Law Society. The Government will appoint one of the lay members to be chairperson of the authority. The authority appoints its own chief executive.

The authority is to have regard to objectives related to the public interest, the administration of justice, the interests of consumers, competition, an independent, strong and effective legal profession, and specified professional principles, which include principles related to independence and

integrity, the best interests of clients, proper standards of work, duties to the court, and confidentiality.

Codes of practice

The authority may issue codes of practice in relation to legal services. If a code issued by the authority and a professional code issued by the Law Society conflict, the authority's code will prevail. Professional codes include regulations and practice notes. The authority has powers to direct the Society to amend its professional codes.

Reports

The authority is to issue various reports, including reports on the following:

- Admission policies of the legal professions (annually),



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- Creation of a new profession of conveyancer (within a period specified by the minister), and
- Such other matters as the minister may request.

And now the science bit...

Part 3 of the act allows inspections of legal practitioners' places of business. The authority may appoint inspectors who have extensive powers.

Part 4 deals with the holding of clients' moneys by legal practitioners. Only solicitors (and not barristers) may hold clients' moneys, but the minister may restrict the holding of clients' moneys by solicitors.

Part 5 deals with professional indemnity insurance. Solicitors must continue to maintain insurance under the Law Society's regulations. The existing right of solicitors to seek to limit liability to clients by contract to not less than the minimum level of cover for PII is maintained.

Part 6 creates a new complaints and disciplinary system, which will be covered in more detail in the April issue of the *Gazette*.

There will be an expanded definition of misconduct. The authority will deal with complaints and will have limited powers of sanction. Informal resolution of complaints about inadequate services and excessive costs will be encouraged. The authority will have a Complaints Committee, which will have power to make referrals to the new disciplinary tribunal. The tribunal will refer serious cases to the High Court for decision on sanction.

Part 7 deals with a levy to cover the expenses of the authority and the new disciplinary tribunal. The Law Society will pay an annual levy. Expenses will be divided between the Law Society and the barristers' profession according to a formula that takes account of the relative sizes of the two professions and the extent to which each profession generates work for the new system.

Part 8 – new practice structures

A 'legal partnership' – effectively a partnership of barristers or a partnership of a solicitor or solicitors with at least one barrister – will be permitted on notification to the authority, which will maintain a register of legal partnerships.

A 'multi-disciplinary practice' (MDP) is a partnership including at least one legal practitioner formed to provide both legal and



non-legal services. The provisions of the act in relation to MDPs will not be commenced until after a report by the authority regarding MDPs is issued.

Limited liability partnerships will be permitted. A partner in an LLP will have a degree of limited liability in connection with the LLP, subject to exceptions in relation to fraud or dishonesty and criminal offences, tax and liabilities incurred before the date of authorisation as an LLP. Authorisation by the authority is required to operate as an LLP, and the authority will maintain a register of LLPs.

Direct access to barristers in non-contentious matters will be allowed. There is to be a report on the holding of clients' moneys by barristers and direct access to barristers in contentious matters.

New costs system

Part 10 is about the new legal costs system, which will be covered in more detail in a future issue of the *Gazette*.

The Taxing Masters' Office becomes the Office of the Legal Costs Adjudicators, and an office of Chief Legal Costs Adjudicator with management responsibilities is created. There will be a register of legal costs adjudication determinations. The jurisdiction of county registrars in relation to taxation of costs continues.

The act continues the prohibition on percentage charging in contentious business, prohibits setting junior counsel costs as a specified proportion of senior counsel costs, and provides that client consent to deduct costs from damages must be *prior* written consent.

Section 150 is about provision of information to clients in relation to legal costs and is the new 'section 68'. It is more detailed and more extensive than section 68 of the *Solicitors (Amendment) Act 1994*. Schedule 1 of

the act sets out principles relating to legal costs.

A legal practitioner and a client may enter an agreement about legal costs that can replace the section 150 notice. Bills of costs are to be regulated. Solicitors will have to attempt resolution of bill disputes by informal means. The act contains detailed provisions relating to adjudication of legal costs.

Part 11 makes statutory provision for the award of legal costs in civil proceedings.

Silk purse

Part 12 is about patents of precedence or entitlement to use the title of 'senior counsel'. For the first time, solicitors will be eligible to apply.

Part 13 makes amendments to the *Solicitors Acts* and many are merely consequential. The *Solicitors Acts 1954-2011* and part 13 of the *Legal Services Regulation Act 2015* are cited together as the *Solicitors Acts 1954-2015*.

The regulation-making powers of the Law Society will be subject to the approval of the authority.

The power to backdate practising certificates where there has been a late application will be transferred from the High Court to the authority.

When the Law Society considers that a solicitor may not be fit to carry on practice for health reasons, it may require the solicitor to be examined by a medical practitioner nominated by the Law Society.

Applications by solicitors for removal of their name from the Roll of Solicitors will be dealt with by the Law Society rather

than the Solicitors Disciplinary Tribunal.

An authority-appointed monitor may attend and observe certain regulatory committee meetings of the Law Society.

Regulation of advertising of legal services will be vested in the authority. The act recognises that restrictions on advertising are legitimate, including restricting advertising that encourages personal injury claims, and so the act does not indicate any intention to change the underlying public policy on advertising by solicitors.

Part 15 is about a pre-action protocol for clinical negligence actions designed to encourage early resolution of allegations of clinical negligence and reduce the incidence of clinical negligence actions. An apology made in connection with an allegation of clinical negligence will not constitute an admission of liability or invalidate insurance cover.

The authority will have extensive powers in relation to professional codes, inspections of legal practices, and the advertising of legal services

Faith, hope and CHARITY



Kevin Hoy is head of real estate at Mason Hayes & Curran and is a partner in the firm's charities and not-for-profit team



Alice Murphy is an associate in the firm's charities and not-for-profit team, specialising in corporate charities and charity regulation

This is an important and challenging time for charities operating in Ireland. **Kevin Hoy** and **Alice Murphy** examine some practical implications of the new regulatory regime for charities

The Charities Regulatory Authority (CRA) was established on 16 October 2014, more than five-and-a-half years after the passing of the *Charities Act 2009*.

The 2009 act (in conjunction with those provisions of the earlier *Charities Acts* of 1961 and 1973, which were not repealed) now provides a legislative framework for the establishment and operation of charities in Ireland. The legislation confirms that there is no one set structure for charities. A 'charitable organisation' may be a charitable trust, a body corporate, or an unincorporated body of persons.

In order to come within the definition of a 'charitable organisation', a charitable trust must:

- Be established for one of the charitable purposes listed in section 3,
- Be established by a deed of trust requiring its trustees to apply all its property in furtherance of that purpose (except for moneys expended in the management of the trust), and
- Confirm that none of the property of the trust will be payable to the trustees, other than in accordance with section 89 (which has not yet been commenced). Section 89 will permit a charity to enter into certain agreements with charity trustees and connected persons.

In order to come within the definition of a 'charitable organisation', a body corporate or an unincorporated body of persons must:

- Promote a charitable purpose only,
- Contain a requirement in its constitution requiring it to apply all of its property in furtherance of that purpose (except for moneys expended in the operation and maintenance of the body, including remuneration and superannuation of its staff) and,

- Confirm that none of the property of the trust is payable to the trustees (other than in accordance with section 89).

In the case of a religious organisation or community, it may apply funds for the accommodation and care of its members.

Charitable purposes

'Charitable purposes' include the prevention or relief of poverty or economic hardship, the advancement of education, the advancement of religion, and other purposes of benefit to the community. Section 3(11) gives 12 categories that now, by statute, come within the community benefit test. The list includes the protection of the natural environment, the advancement of the arts, the promotion of health, and the promotion of civic responsibility.

at a glance

- A 'charitable organisation' may be a charitable trust, a body corporate or an unincorporated body of persons
- The CRA establishes and maintains a register of charitable organisations, ensuring and monitoring compliance by charitable organisations with the provisions of the act, promoting the effective use of the property of charitable organisations, and increasing public trust and confidence in the management and administration of charitable organisations
- A charitable organisation that intends to operate or carry on activities in the State must register with the CRA. This applies regardless of the place of incorporation or the legal structure of the charitable organisation



Any charitable organisations that have a 31 December financial year-end and have not yet completed registration and/or annual reporting with the CRA for year-end 31 December 2014 should now do so without delay

Each purpose must be of public benefit in order to be a charitable purpose. There is a statutory presumption that a gift for the advancement of religion is of public benefit. All other charitable purposes must be shown to be intended to benefit the public or a section of the public. The rules of the religion govern the construction of a gift for the advancement of that religion. This may be the first statutory recognition of the status of the internal rules of religions (for example, the [Canon Law](#) of the Roman Catholic Church).

New regulatory regime

The establishment of the CRA (by part 2) paved the way for Ireland's first bespoke regulatory regime for charitable organisations. Previously, the Commissioners of Charitable Donations and Bequests for Ireland and the Revenue Commissioners dealt with charitable organisations, but the former's role was more one of prudent facilitation rather than oversight, and the scope of the latter was (and is) limited to tax.

The CRA establishes and maintains a register of charitable organisations, ensuring and monitoring compliance by charitable organisations with the provisions of the act, promoting the effective use of the property of charitable organisations, and increasing public trust and confidence in the management and administration of charitable organisations.

The CRA has taken on the functions previously performed by the



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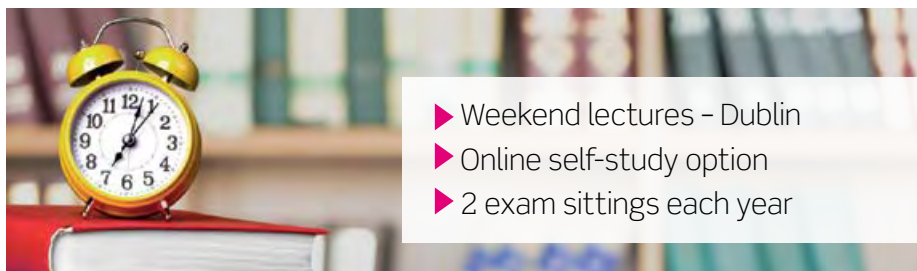
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Registration

Section 39 requires that a charitable organisation that intends to operate or carry on activities in the State must register with the CRA. This applies regardless of the place of incorporation or the legal structure of the charitable organisation.

When establishing the CRA, the Minister for Justice made it clear that the first task of the new authority was to be the registration of charitable organisations operating in Ireland. As the only public list of charitable organisations maintained was the Revenue Commissioners' 'CHY list', the act enabled the CRA to place all CHY holders on the new CRA register. These are described at section 40 as 'deemed registered'.

The CRA has written to these charities requesting further details, such as names and addresses of trustees, a copy of the governing documents, and a summary of the charitable objective. The CRA wishes to have the same information about those 'deemed registered' charities as it will have for charities that apply for registration.

All other charities must register by 16 April 2016. Under section 39(5), the applicant must include its address, place of operation, particulars of the kinds of activity carried out, the manner in which the charitable organisation has raised or proposes to raise money, particulars of all professional fund-raising agents, risk-assessment procedures, safeguards employed, income of the charitable organisation, and a copy of its constitutional documentation.

No doubt with the detailed requirements of section 39 in mind, the CRA initially produced a very detailed online questionnaire. It asked all CHY charities to create an online account and to respond to the online questionnaire. In September 2015, the CRA simplified its process for registration by reducing the volume and scope of the questionnaire, which now deals solely with factual details about the charitable organisation, an overview of its charitable purpose and objects, address and contact details, trustee and officer details and the organisation's constitutional or governing document(s).

After a charitable organisation has completed and submitted its registration, its online CRA account will show a 'maintain charity details' screen. Charities must update key details such as trustees and addresses by including the changes in the 'maintain charity details' section of its online CRA account.

FOCAL POINT

size matters

The CRA's online annual reporting questionnaire classes charitable organisations by size – 'small' if gross annual income is less than €10,000, 'medium' if gross annual income is between €10,001 and €100,000, and 'large' if gross annual income is more than €100,000. All charitable organisations, regardless of size, must detail the activities they carried out during the reporting period in furtherance of their charitable objectives. They must disclose the groups that directly benefit from the activities of the organisation during the reporting period, as well as information such as number of employees and volunteers and key financial data.

Small charitable organisations may, but are not required, to submit a profit-and-loss

account (or income and expenditure account and statement of assets and liabilities) for the reporting period.

Medium-sized organisations must provide a profit-and-loss account (or income and expenditure account and statement of assets and liabilities) for the reporting period.

Large charitable organisations must provide audited accounts, including directors' and auditors' reports. Education bodies are exempt from the accounts requirements, as these are already subject to Department of Education and Skills oversight. Charities established as companies are also exempt, as these are already subject to the accounts requirements of the *Companies Act 2014*.

If a charitable organisation is not registered or is not deemed registered, then, under section 41, it is an offence for that charitable organisation or a person to advertise, seek donations, or accept gifts.

Annual reporting


All charities must also comply with their obligations under section 52 to prepare and submit to the CRA a report in respect of its activities in each financial year. Financial transparency is one of the key ways to reassure donors that their contributions are being used as intended.

The charitable organisation must file its annual report within ten months after the end of each financial year. As the relevant sections of the *Charities Act 2009* were commenced on 16 October 2014, the first applicable financial year-end for most charitable organisations was 31 December 2014, and the first annual report date was 31 October 2015. The CRA online questionnaire is structured so that a charitable organisation cannot complete its annual report until it has completed its online registration. After a charitable organisation completes its registration online, the CRA will email the charity with its annual report date.

The processes of registration and annual reporting for charitable organisations are important developments for the sector and are to be welcomed. There is no public data available on the level of compliance to date, but we are aware that this has been a very important issue for the sector during 2015 and into 2016. This has particularly been the case for charitable organisations

that are not established as companies (such as trusts or unincorporated associations), as CRA registration and annual reporting represented their first ever statutory or public filing.

Any charitable organisations that have a 31 December financial year-end and have not yet completed registration and/or annual reporting with the CRA for year-end 31 December 2014 should now do so without delay. Charitable organisations with other financial year-ends need to count forward ten months from their year-end date to ascertain their reporting deadline. All charitable organisations need to keep in mind that this is now an annual compliance requirement.

The regulator has emphasised that the primary focus for the moment is on helping charities to comply. The CRA has been touring the country to reach out to smaller charities in particular. In the coming months, the accounting standards will be set by the Minister for Justice and the method by which schools will register will be clarified. After hundreds of years without any regulation, it is not surprising that implementation has challenges for all. 

The register is now available at www.charitiesregulatoryauthority.ie.

look it up

- [Charities Act 1961](#)
- [Charities Act 1973](#)
- [Charities Act 2009](#)
- [Companies Act 2014](#)

In what

CAPACITY?



Kate Butler is a practising barrister and a board member of Inclusion Ireland, a representative group for people with intellectual disabilities. She is available to give talks on this topic

The Assisted Decision-Making (Capacity) Act 2015 governs the law in relation to adults who are experiencing difficulties with decision making – and it changes the definition of ‘capacity’. Kate Butler holds your hand

Last December, the president signed a new piece of legislation into law that has the potential to affect every adult in the State: the *Assisted Decision-Making (Capacity) Act 2015*. The act governs the law in relation to vulnerable adults who are experiencing difficulties with decision making, whether because of intellectual disabilities, acquired head injuries or old age, and applies to any relevant person (RP) whose capacity is in question, or may shortly be in question, in respect of one or more matters (section 2(1)).

Commencement dates have yet to be published, but it is hoped that it will be commenced within 2016. It is a progressive and reforming piece of legislation: it repeals the *Lunacy Regulations (Ireland) Act 1871*, which heretofore governed the law in this area. It changes the

definition of capacity: while previously it was assessed on a ‘status’ basis – you either had it or you didn’t – now it can be assessed on a ‘functional’ basis.

It is a progressive and reforming piece of legislation: it repeals the Lunacy Regulations (Ireland) Act 1871, which heretofore governed the law in this area

Section 3 provides: “A person’s capacity shall be assessed on the basis of his or her ability to understand the nature and consequences of a decision to be made by him or her in the context of the available choices at the time the decision is made.”

Rather than a fixed idea that a person can or cannot make any decisions, capacity is therefore to be understood as a fluid, changeable concept, depending on the circumstances of the person at the time and the nature of the decision to be made.

An assessment of capacity will also take into account that a person may be able to understand matters if they are presented to the person in a particular way (for example, through pictures or plain language).

Crucially, the act defines capacity in relation to decision-making and explicitly sets out that it does not apply to capacity or consent required in relation to marriage, civil partnership, judicial separation, divorce, the placing of a child for adoption, the making of an adoption order, guardianship, sexual relations, serving as a member of a jury, or making a will.

At present, decisions to exercise fundamental rights do not have legal force when a person is a ward of court, because he or she isn’t considered to have the capacity to make any important decisions. Indeed, the power or capacity to make these decisions, self-determination, is removed from these persons altogether.

The act does away with – as much as is possible – a paternalistic, ‘best-interests’ system of substitute decision-

at a glance

- The *Assisted Decision-Making (Capacity) Act 2015* governs the law in relation to adults who are experiencing difficulties with decision making, whether because of intellectual disabilities, acquired head injuries, or old age
- It changes the definition of capacity: while previously it was assessed on a ‘status’ basis, now it can be assessed on a ‘functional’ basis.
- The act defines capacity in relation to decision-making and explicitly sets out that it does not apply to capacity or consent required in relation to marriage, civil partnership, judicial separation, divorce, the placing of a child for adoption, the making of an adoption order, guardianship, sexual relations, serving as a member of a jury, or making a will

Capacity is therefore to be understood as a fluid, changeable concept, depending on the circumstances of the person at the time and the nature of the decision to be made

making. Where a person is assisting an RP to make a decision, and even if the assistant believes that the RP is making an unwise decision, the assistant must assist the RP in making the decision of the RP's choice (as long as no harm would come to the RP or another person).

The act is 147 sections long and deals

with a huge range of issues, including the *Convention on International Protection of Adults*, which is not dealt with here.

Wards of court

The ward of court system is to be eliminated through a process of review: each ward of court aged 18 or over must be reviewed by the

High Court or Circuit Court (whichever court made the original order) within three years of commencement. If they are deemed not to be lacking in capacity, they will be discharged and their property returned to them.

If they are deemed to be lacking in capacity in relation to a particular decision, then they will be discharged and will come under

REFERENCE POINT

main actors in assisted decision-making

- 1) **Relevant person (RP):** an RP is someone whose capacity is in question, or may shortly be in question, in respect of one or more matters (section 2(1)), and a person who lacks capacity.
- 2) **Director:** the office of Director of Decision Support Service replaces the Office of Wards of Court, but with much extended functions.
- 3) **Circuit Court:** apart from specified issues where the High Court has jurisdiction, the Circuit Court has jurisdiction to deal with applications under the act. The court may make two declarations in relation to capacity:
 - That a person lacks capacity to make a decision without assistance (that is, once they have assistance, they effectively have capacity),
 - That a person lacks capacity to make a decision even with assistance.
- 4) **Decision-making assistant (DMA):** an RP may appoint a person to be their decision-making assistant. The functions of the DMA are limited to advising the RP, ascertaining the will of the RP and, once the decision is made, ensuring that the decisions are implemented.
- 5) **Co-decision maker (CDM):** an RP may appoint a suitable person to be their co-decision maker, so that they can make decisions jointly in relation to personal welfare or property, or both. This person must be a relative or friend who has a relationship of trust. The agreement must be registered with the director, and the CDM must file a report every 12 months, which must be approved by the RP. The director must conduct a review every three years.
- 6) **Decision-making representative (DMR):** the Circuit Court may appoint a DMR or make a decision-making order on behalf of the RP. A DMR has whatever powers the court directs and so there are specific restrictions – for example, a DMR cannot prohibit a person from having contact with the RP and cannot restrain the RP unless there are exceptional circumstances. The director must keep a register of DMRs, and the DMR must file a report every 12 months.

the purview of the new regime – that is, the former ward may appoint a co-decision maker (CDM) or the court may appoint a decision-making representative (DMR).

There are interim orders provided for, so that the court can make orders where an application has been brought before the court but not yet determined. While the *Lunacy Regulation (Ireland) Act 1871* is repealed, the jurisdiction in lunacy and minor matters is an inherent one, so it is likely that the wardship jurisdiction in relation to minors will survive enactment.

Enduring powers of attorney

The act will ultimately replace the *Powers of Attorney Act 1996*. The scope of authority of enduring power has been extended, in that it may confer authority on an attorney to make decisions about the donor's personal welfare. Previously, an attorney could make personal care decisions that did not include the giving or refusing of medical treatment. Personal welfare is now defined to include accommodation; participation by the donor in employment, education or training, and in social activities; decisions on any social services; healthcare; and other matters relating to the donor's well-being. However, a donor is restricted from including the following matters in powers relating to personal welfare: the refusal of life-sustaining treatment or anything that is the subject of an advance healthcare directive made by the donor.

Procedures in relation to the instrument include the requirement for statements by the donor, by a registered medical practitioner and a healthcare professional, and by the attorney. The procedures for revoking – which were not set out explicitly in the 1996 act – are also particularised. Once the instrument has been registered, revocation may only occur following an application to the court.

The attorney must file a report to the director every 12 months. Where the powers

relate to property and affairs, the attorney must submit a schedule of assets and liabilities, as well as projected statement of the donor's income and expenditure within three months of registration.

Advance healthcare directives

Anyone aged over 18, and who has capacity, may make an advance healthcare directive (AHD). This will enable the directive-maker to be treated, if they lack capacity in the future, according to their will and preferences. AHDs are not applicable to general and mental health, and are not applicable where a person is suffering from a mental disorder and involuntarily detained under part 4 of the *Mental Health Act 2005*.

While a refusal of treatment must be complied with (if the treatment and circumstances are clearly identified in the AHD), a request for a specific treatment is not legally binding. An RP, if he or she has capacity and is over 18 when making the AHD, is entitled to refuse treatment for any reason, including a reason based on religious beliefs.

An AHD is not applicable to life-sustaining treatment, unless this is substantiated by a statement by the directive-maker to the effect that the AHD is to apply even if his or her life is at risk.

A directive-maker may designate a named individual to exercise relevant powers, that is, to be their healthcare representative (HR). The HR has the power to ensure that the terms of the AHD are complied with, and the directive maker may confer powers that allow the HR to advise and interpret the directive-maker's will and preferences, and to consent or refuse treatment, up to and including life-sustaining treatment, based on the known will and preferences of the directive-maker by reference to the AHD.

Where there is an ambiguity in how the AHD is to apply, the healthcare professional

must consult with the HR or friends and family. Where it is not resolved, it must be resolved in favour of the preservation of the directive-maker's life.

Safeguards and offences

Safeguards such as eligibility, disqualification, facility for complaints, and so on, are fairly uniform across the spectrum. There is oversight by the director in relation to a CDM, a DMR, a HR and powers of attorney, but not in relation to the appointment of a decision-making assistant by an RP, except via complaint.

There are criminal offences in relation to fraud provided for, but only in respect of a co-decision-making agreement and powers of attorney.

A decision-making assistant, co-decision maker, decision-making representative, or attorney who ill-treats or wilfully neglects the RP will be guilty of an offence and liable for summary conviction or conviction on indictment.



look it up

Legislation:

- *Assisted Decision-Making (Capacity) Act 2015*
- *Powers of Attorney Act 1996*

Literature:

- Butler, Kate, 'Moving capacity out of the Victorian age: the new Assisted Decision-Making Bill', 18(5) 2013 *Bar Review* 102
- Duggan, Diane, 'Capacity law in Ireland: Assisted Decision-Making Bill 2013' [2014 (1) *Irish Family Law Journal* 28]
- Healy, Kevin, 'The Assisted Decision-Making (Capacity) Bill 2013: a step in the right direction, but does it go far enough?' 2015 *Cork Online Law Review* 101



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JOHN PC GOFF – AN APPRECIATION

On 30 March 2015, John PC Goff (retired solicitor and coroner) passed away. He did so having left an indelible mark on the Irish legal landscape.

As a solicitor practising in Waterford for over 55 years, John was active on many fronts. Having secured the silver medal at the Law Society final exams, John began his professional career at George A Nolan's office in 1957. He was known to "work hard and keep long hours".

John made his name in the District Court and was never afraid to speak his mind in court or outside. As time went by, he became involved with many organisations. He was treasurer of the National Council for the Blind for 13 years, receiver to the trustees of the Holy Ghost Hospital, Waterford, as well as Waterford City coroner for several decades. He was a past-president and extremely active member of the Waterford Law Society and was always associated with the affairs of Waterpark College. He was a successful sportsman in many codes during his youth. In more recent years, he took up golf with his great pal Paddy Lowe, and spoke with pride of his hole-in-one at Dunmore East Golf Club.

In 1974, he teamed up with his friend and colleague Iain Farrell (Farrell & Farrell) to form the amalgamated firm of Nolan, Farrell & Goff, which opened its offices at Newtown, Waterford, in 1975 and continues there to this day. John had extremely high standards for himself, which he expected others to at least try to match. He was not slow to express a view on how something should be done properly, but always in a fair and encouraging fashion. In



a sense, John was all things to all people. He would put each and every client at ease, irrespective of their background, and invariably know that person's parents or relatives. He had an innate capacity to empathise with every client and instil confidence in their intended course of action.

John also energised and commanded respect from each and every person he worked with at Nolan, Farrell & Goff. He was a mentor for many. To quote from Mr Justice Frederick Morris when John celebrated 50 years in the profession: "John was always polite, always wise, always good company, and always the essence of whatever it is that goes to make up a brilliant lawyer ... I have

never known him to be wrong. In all cities, there is always one lawyer that everyone in the legal world knows on first-name terms and to whom they turn for advice and guidance. That person is undoubtedly John in the case of Waterford City."

To quote Judge Tom Teehan: "More than all his other qualities, what I most admire about John is that he simply does things right. There are no flourishes; there is no bombast; he never seeks to push himself forward. Yet the preparation for a case is invariably painstakingly thorough, something for which innumerable clients and a considerable number of barristers briefed by him over the years have

particular reason to be grateful."

In short, John PC Goff was the gold standard for the solicitors' profession. Essentially a quiet family man, he nonetheless was great company, a master of wit, and available to assist his colleagues whether within his own firm or outside. John's rock and soulmate was his wife Rosemary, who steadfastly supported John in all his endeavours throughout the years. The other joys in his life were his five children, (twins Viva and Frances, John, Hubert and Rosemary) and his 13 grandchildren.

Adjectives such as professional, gentleman-like, honest and hard-working could all be applied, equally, to John. A deeply religious man, he would be first into the office at Newtown after early Mass each morning, and last to leave. It was John's practice to go home for his 'tea' and return to the office each evening for a number of hours. For him, Saturday was also a day of work but, thankfully, he still found time somehow to immerse himself fully in family affairs at his home in 'Marlfield', Newtown, as well as engage with his many friends.

Retired since 2013, John nonetheless remained interested in his firm and available to listen and advise his former colleagues, if required. He remained active around Waterford City and could be seen daily at the People's Park or Ardkeen Shopping Centre, where he continued to engage and banter with many. His passing is an enormous loss to Rosemary, his family, the legal profession, his firm, many colleagues and friends.

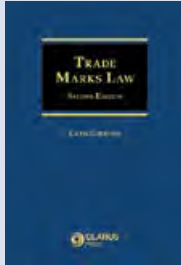
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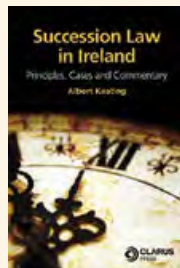
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Consumer Law: Rights and Regulation

Mary Donnelly and Fidelma White. Round Hall (2015), www.roundhall.ie. ISBN: 978-0-4140-39-001. Price: €285 (+€65.55 VAT).

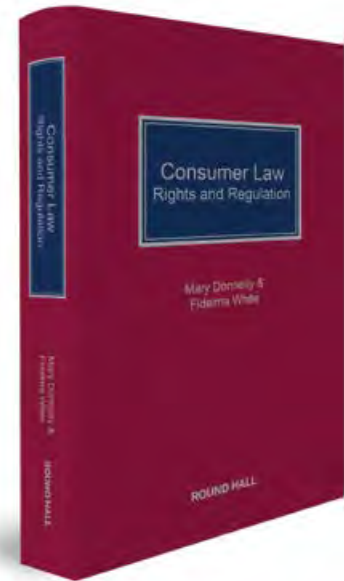
That the consumer is entitled to certain protections is now an accepted part of our law. However, the diverse and frequently incoherent patchwork of legislative intervention is a cause of confusion and cost.

The great merit of this book is that the policy context of consumer law generally and of particular provisions is set out in a very accessible way, helping to identify overarching themes.

All practitioners would associate consumer law with the sale of goods and supply of services, and the book deals with these comprehensively.

However, the authors go much further. They recognise that there are many sectors where the consumer is given specific consideration. The book concentrates on two of these – financial services and consumer credit – and provides an invaluable guide to topics of fearsome complexity. Their analysis of jurisprudence on the status of ‘soft’ regulation, such as codes, is especially useful.

The primary protective technique of consumer law is the requirement of the provision of adequate information to allow the consumer to make an informed decision, frequently linked to a right to withdraw. This can lead to counterproductive information overload. It is clear that the prohibition of certain practices and the imposition of mandatory obligations (especially in relation to vulnerable consumers) are also



required to generate the confidence that underpins the growth in the consumer market. The application of these techniques in Irish law is lucidly laid before us.

Rights are meaningless without means of redress. Consumers face practical difficulties in relying on civil proceedings. The authors set out the criminal, administrative, collective online and alternative remedies available at national and EU level.

This book is the first comprehensive analysis of consumer law in the Irish context. Any practitioner called to advise on an issue potentially affecting a consumer would be wise to consult it.

Paul Keane is managing partner of Reddy Charlton, Solicitors.



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The Law of Advertising in Ireland

Patrick Ambrose. Bloomsbury Professional (2015), www.bloomsburyprofessional.com. ISBN: 978-1-7804-384-36. Price: €195.

The Law of Advertising in Ireland is the first work on the subject in this jurisdiction. Patrick Ambrose is to be congratulated, as it is a valuable addition both for lawyers acting as advisers and as business owners in their own right.

The book deals comprehensively with what is an extremely broad subject. It brings together a wide range of diverse areas of law.

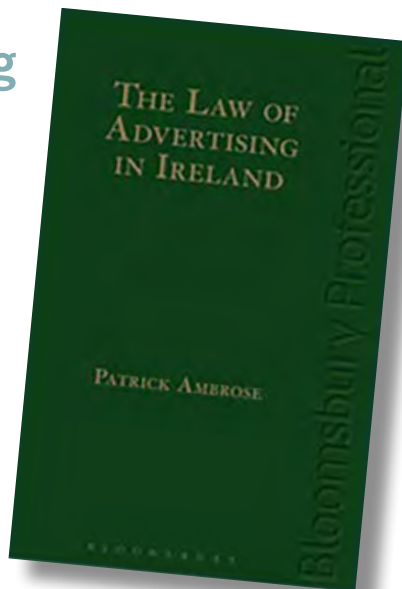
It is divided into three sections: part 1 deals with general law and regulation; part 2 deals with special advertising rules; and part 3 deals with regulatory authorities.

Part 1 ranges across the types of specific areas that one would naturally associate with advertising. But it then also addresses individually many more general areas of law that have an impact on the field.

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Finally, part 3 reviews the scope and structure of each of the regulatory authorities.

Within each subject category, we are provided with a comprehensive review of that area of law from an advertising and marketing perspective. Detailed consideration is also



given to the relevant voluntary codes in each area.

This book makes the life of the practitioner faced with advising in this area immeasurably easier, bringing this wide and varied body of law together in one place with practical contextual analysis and guidance. The writing style is clear and concise and enables the reader to get to the point required quickly and easily.

This book will be a boon to lawyers working with clients who advertise, in-house counsel, those advising consumers, and lawyers engaged in the marketing and advertising  of their own businesses.

Flor McCarthy is managing partner of McCarthy & Co, Solicitors.

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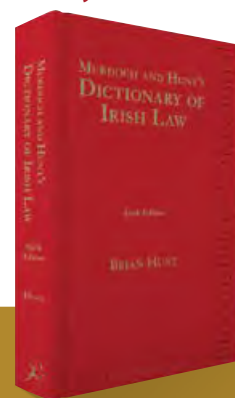
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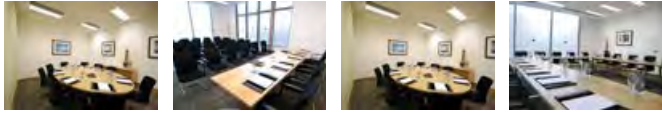
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4 December 2015 and 29 January 2016

council reports

Report of Council meeting on 4 December 2015

Legal Services Regulation Bill

The Council noted that, once the bill had completed report stage in the Seanad, it would move back to the Dáil. It seemed clear that the bill would be enacted before Christmas. The timeline in relation to the commencement of its different parts after that date remained uncertain.

It was expected that all nominating bodies, including the Law Society, would be asked to inform the department of the names of their nominees to the board of the Legal Services Regulatory Authority, which would comprise 11 members, each serving a term of three years. The Society was required to provide the names of two nominees, one male and one female. The Government would choose from among the nominated lay members of the board in order to appoint its chair.

The Council unanimously approved the nomination of Geraldine Clarke and James MacGuill as the Society's nominees. Both were eminent past-presidents and had represented the Society nationally and internationally at CCBE and IBA level. Both had a keen understanding of the essence of the core values of the profession and were also independent-minded and fearless.

Practising Certificate Regulations

The Council approved the *Practising Certificate Regulations* and fees for 2016, with no change to the fees applying for 2015. The Council noted that the number of practising certificates expected at 31 December 2015 was 9,700 – an increase of 465 (or 4%) on the previous year.

Member Services Directory

The president noted that the *Member Services Directory 2016* would issue to all members of the Society during the coming months. In addition, a campaign to encourage membership would

be undertaken by the Representation and Member Services Department.

New working groups

The Council approved the appointment of two working groups, as required by motions passed at the AGM: a working group to investigate insurance to cover defence costs, and a working group to investigate a graphic to be used by member practitioners.

Group Life Scheme

The Council noted, with regret, that the amount of cover under the Group Life Scheme for a premium amount of €50 had been reduced from €58,000 to €47,500 due to a bad claims experience over the previous two years.

Report of Council meeting on 29 January 2016

Legal Services Regulation Act

The chairman of the Legal Services Regulation Act Task Force, Paul Keane, reported on the task force's work programme for the coming months. He noted that the task force had identified the principal topics of the act, as follows:

- Authority – establishment and responsibilities,
- Complaints and discipline,
- Levy to cover expenses of the authority,
- Practice organisation – LLPs, MDPs, LPs,
- Legal costs,
- Senior counsel,
- Amendments to the *Solicitors Acts*, and
- Clinical negligence actions.

A summary of the principal provisions of the act was being prepared and would issue to the profession in due course.

Communication with the profession would be a core function of the task force and would involve an initial phase of information at cluster events, followed by a process of in-depth CPD programmes and coordination and liaison with the bar associations.

A web page had been estab-

lished that would gather together all relevant materials in relation to the act, and work had commenced on an updated *eCompendium* of the relevant acts. In addition, articles would be published in the *Gazette* and *eZine* and a meeting of presidents and secretaries of bar associations would be held in March to discuss the coordination and dissemination of information via the bar associations.

In terms of useful materials for the profession, the Society would need to consider different forms of guidance in relation to various aspects of the act, including a guide to becoming an LLP, a guide to the new legal costs system, and perhaps also a guide to the new provisions on clinical negligence actions.

The task force had taken the view that the guide on legal costs should be regarded as a priority and, as a consequence, a special working group had been established to draft documentation and precedent forms.

eConveyancing Project

Patrick Dorgan noted that the system being developed by the Law Society of England and Wales had collapsed. He reassured the Council that there were no parallels between that project and the Society's eConveyancing Project. The English project had sought to design a case-management system to bolt onto other case-management systems, which were already overlaying existing processes. The Irish project involved a complete re-engineering of the conveyancing process and bore no similarities to the English project.

Setanta case

Stuart Gilhooly reported that the *Setanta* case had been heard by the Court of Appeal two weeks previously for two-and-a-half days. The Society had been represented in an exemplary fashion by Brian Murray SC. Hopefully, the judgment would be handed down within a week or two.

Specialist accreditation

Valerie Peart reported that a subcommittee of the Education Committee, established to examine the issue of specialist accreditation, had concluded that, while there was a great deal of merit to the concept of specialist accreditation and good reasons for the recommendation from the Future of the Law Society Task Force, this was not the time to introduce specialist accreditation. It was the view of the subcommittee that, if introduced, accreditation was likely to fail due to insufficient uptake by practitioners. The subcommittee had also gained a clearer understanding of the statutory provisions under which a solicitor could claim a specialism, although not superiority above other solicitors.

LawCare

In her capacity as a trustee of LawCare, Valerie Peart briefed the Council on its activities. She noted that LawCare had received 25 calls from Irish solicitors in 2015, an 8.5% increase compared to 2014. Calls related to stress (43%), bullying or harassment (19%), depression (14%), and alcohol (14%). The remaining 10% included disciplinary, ethical and financial issues. LawCare attended six LSPT cluster events during 2015 in order to raise awareness about it and the importance of valuing well-being within the legal community.

Retirement wishes

The Council conveyed its very best wishes to the former head librarian Margaret Byrne, who retired after 42 years of dedicated service.



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 BUSINESS LAW COMMITTEE

Amendments to the *Companies Act 2014*

The attention of practitioners is drawn to the fact that, since the entry into force of the bulk of the *Companies Act 2014* on 1 June 2015, the act has been amended by several pieces of legislation and that further amendments are anticipated.

As of 1 February 2016, the key amendments that have been made to the act are, as follows.

European Union (Bank Recovery and Resolution) Regulations 2015 (SI 289/2015)

The bulk of these regulations, which transpose the *Bank Recovery Resolution Directive*, came into force on 15 July 2015. Regulation 189 of the regulations amends 14 sections of the *Companies Act 2014*. The principal purpose of the amendments is to provide that the relevant sections of the act shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in part 4 of the regulations are applied or exercised. Certain other technical amendments are made to the act in order to give effect to the regulations.

The affected sections are 2(1), 93, 191, 621, 622, 1023, 1029, 1035, 1036, 1099, 1102, 1111, 1128, and 1167.

Workplace Relations Act 2015

Section 49(1) of the *Workplace Relations Act 2015* operates to include all compensation payable by virtue of part 4 of the act to an employee among the debts that, under section 621 of the act, are in the distribution of the assets of a company being wound up, to be paid in priority to all other debts.

Section 49 was commenced on 1 October 2015 by SI 410/2015.

European Union (Traded Companies – Corporate Governance Statements) Regulations 2015 (SI 423/2015)

Regulation 4 of these regulations, which were made on 2 October 2015, also amends the act by substi-

tuting a new subsection for subsection 7 of section 1373. The effect of the amendment is to alter the obligations of the statutory auditors of a traded company (as defined by chapter 3 of part 23 of the act) in respect of the report of the statutory auditors under section 391 of the act, where a traded company prepares a corporate governance statement.

Companies Act 2014 (Section 1313) Regulations 2015 (SI 223/2015)

These regulations were made on 29 May 2015 and came into force on 1 June 2015.

Regulation 4 applies particular provisions of the act to unregistered companies traded on a regulated market: “The following provisions of the act of 2014 are added, but only in respect of a body referred to in section 1312 of that act that is a traded body within the meaning of subsections 5 and 6 of that section, to the list of the provisions specified in schedule 14 to the act of 2014:

- a) Section 1114,
- b) Sections 1085, 1086, 1087, 1094, 1095, 1096 and 1123, and
- c) Chapter 5 of part 17.”

Companies Act 2014 (Section 1313) Regulations 2016 (SI 43/2016)

These regulations were made on 1 February 2016 and came into force on that day.

Regulation 3 applies section 1120 of the act to unregistered companies traded on a regulated market by adding that section (but only in respect of a body referred to in section 1312 of that act that is a traded body within the meaning of subsections 5 and 6 of that section) to the list of the provisions specified in schedule 14 to the act.

European Union (Insurance and Reinsurance) Regulations 2015 (SI 485/2015)

These regulations, which are con-

cerned with the authorisation of insurance and reinsurance undertakings and related matters, were made on 4 November 2015 and came into force on 1 January 2016. They affect the act as follows:

- 1) They restrict the application of:
 - Section 453(2)(c) of the act (regulation 71),
 - Section 621 of the act (regulation 277(1)), and
- 2) Regulation 316 amends the act as follows: “Section 275(1) of the act of 2014 is amended, in the definition of ‘insurance undertaking’, by substituting the following for paragraphs (d) and (e):
 - ‘(d) Regulation 2 of the *European Communities (Life Assurance) Framework Regulations 1994* (SI no 360 of 1994),
 - (e) *European Communities (Reinsurance) Regulations 2006* (SI no 380 of 2006), or
 - (f) Regulation 3 of the *European Union (Insurance and Reinsurance) Regulations 2015* (SI no 485 of 2015).’”

Legal Services Regulation Act

This act was signed by the President of Ireland on 29 December 2015.

Section 132 provides as follows: “Section 27 of the *Companies Act 2014* is amended by the insertion of the following subsection after subsection (3): ‘(3A) Subsection (1) as it relates to the use of the word ‘lim-

ited’, or any abbreviation of that word, shall not apply to a limited liability partnership (within the meaning of the *Legal Services Regulation Act 2015*).’”

As at 1 February 2016, this act had not yet been commenced.

Further anticipated amendments

The *Companies (Accounting) Bill* is expected to be published later in 2016 in order to transpose the *EU Accounting Directive* (2013/34/EU) (see also the practice note published in the *Gazette* in July 2014 (p54), for more information on the implications of this directive). It is currently expected that the existing non-filing exemption for unlimited companies will be removed in this bill, possibly for financial statements from 2016 onwards. This will necessitate an amendment to the act.

It is also believed that this bill may also include a number of additional amendments to the act. A further update will be published in due course.

Explanatory memorandum

On 4 November 2015, the Department of Jobs, Enterprise and Innovation published the *explanatory memorandum to the 2014 act*. This explanatory memorandum is an important resource that gives an overview and brief background into every section of the 2014 act.

 CONVEYANCING COMMITTEE and TAXATION COMMITTEE

Increase in CGT threshold

The committees would like to bring the following to the attention of the profession: an increase in the CGT threshold to €1million was introduced under section 42 of the *Finance Act 2015* and came into effect on 1 January 2016.

This increased threshold applies solely in respect of disposals of residential houses/apartments, being

defined as “including any building or part of a building used or suitable for use as a dwelling and any out office, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building”.

The €500,000 threshold remains in place as before for disposals of all other Irish land and buildings (including commercial property).



CONVEYANCING COMMITTEE

Commercial rates update

In the [practice note](#) published in the August/September 2014 *Gazette* (p46) concerning [section 32](#) of the *Local Government Reform Act 2014*, the committee had indicated that, having regard to the provisions of section 32(4), the key consideration for a landlord in avoiding a potential charge of up to two years arrears of rates on an assignment or subletting by the tenant was ensuring that the tenant was not in arrears. This remains the position.

However, having considered various submissions from practitioners, the committee also agrees that the charge under section 32(4) can be avoided so long as notice of the assignment or subletting has been given within the two-week period following the assignment or subletting. This is because section 32(4) provides that the charge will apply where the landlord has not given notice of the assignment or subletting and where there are unpaid arrears of rates. Accordingly, there must be an issue under both limbs if the charge is to apply. Therefore, service of the requisite notice would appear to take the landlord's interest

in the property outside of the application of section 32(4). Consequently, while landlords should be advised as a matter of good practice to make it a condition of consent to assignment or subletting that there is a discharge of arrears, landlords can protect themselves in any event by ensuring that the requisite notice is served.

The committee has also received a number of queries from practitioners on the issue of the liability of landlords for the unpaid rates of their tenants where the tenant has surrendered the property. While the committee is not in a position to comment on matters of law (and therefore practitioners should consider this matter themselves), it would appear that under the 2014 act, the landlord, as subsequent occupier, no longer has liability for any arrears following a surrender. However, notwithstanding this, it would also appear to be the position under section 32(4) that, unless notice is given by the landlord within two weeks of the transfer to the landlord of the property, then up to two years of any unpaid rates will be a charge on the landlord's interest,

even if the arrears are subsequently paid.

Practitioners should note that the legislation does not clarify what is meant by 'transferred'. Again, the committee is not in a position to comment on matters of law, so it is suggested that, until there is clarity on this matter, it would be preferable to take a conservative view and apply a wider interpretation to 'transferred' as including all circumstances (and not just surrenders) in which the landlord obtains possession of the property, including on lease expiry, the exercise of a break option, or forfeiture.

The foregoing is a change to the previous position at law that landlords were automatically liable for up to two years' arrears as subsequent occupiers. The relevant statutory provisions that governed this have now been repealed by the 2014 act. This change now enables a landlord to avoid liability for the unpaid rates of its tenants, providing that the landlord has served the requisite notice.

The committee recognises that there may be circumstances in which it is not clear as to whether a 'trans-

fer' of the property has occurred or as to the date on which a transfer has occurred (whether on assignment or the property being vacated) and consequently by what date the notice needed to be served. Therefore, where there are unpaid arrears, there may be the potential in some cases for dispute with the local authority as to whether or not a charge has arisen. The committee will keep these matters under review.

The committee also notes that various local authorities are requiring that notifications under section 32 be made in a specified form. Some of these forms look for certain commitments and contain certain warranties. Given that there does not appear to be any basis under the legislation for these requirements, the committee intends to take the matter up with the Local Government Management Agency. In the meantime, the committee is of the view that notification by letter is equally permissible, and recommends that the client's notification by letter under section 32 should not be delayed in circumstances where clients are unable to complete the detail in the required form.



CONVEYANCING COMMITTEE and TAXATION COMMITTEE

LPT – changes to Revenue guidelines

The Conveyancing and Taxation Committees are pleased to advise practitioners that Revenue, following a meeting with representatives of the two committees in October, has recently revised its LPT guidelines on the sale and transfer of residential property. You can access the revised guidelines on www.revenue.ie/en/tax/lpt/sale-transfer-property.html.

These changes will increase the number of cases where general clearance applies without having to refer the matter to Revenue. The main changes, effective as of 1 November 2015, are:

- There is a new general clear-

ance condition: where a property is sold for €300,000 or less, general clearance applies, regardless of what chargeable value was declared for the property,

- The allowable valuation margins by which the sale price/value exceeds the valuation band/chargeable value declared have been increased:
 - In relation to properties outside Dublin city and county, from 15% to 25%,
 - In relation to properties in Dublin city and county, from 25% to 50%,
- The above increased allowable

margins are carried through to the general clearance condition relating to expenditure on enhancements to a property,

- In the general clearance condition relating to sales of comparable properties, the time period prior to 1 May 2013 within which there must be evidence of a sale of comparable property has been increased from six months to nine months.

The committees will continue to monitor these changes and would welcome any feedback from practitioners on any difficulties they encounter.



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New year – new CPD Regulations

New CPD regulations (*Solicitors (Continuing Professional Development) Regulations 2015*, SI 480 of 2015) came into effect on 1 January 2016. Solicitors are advised to familiarise themselves with these new regulations and the new scheme, which are both available in the [CPD scheme section](#) of the solicitors' area on the Law Society website.

With the introduction of the new regulations, it is a good opportunity to remind solicitors to be cognisant of CPD obligations and of the importance of completing relevant and quality CPD.

Importance and benefits

It is often asked why CPD is important and why it matters.

Simply put, CPD assists in ensuring solicitors remain competent in providing a professional service by ensuring their knowledge and skills are relevant and up-to-date. It is an indicator of professionalism and opens up new knowledge and skills areas, which may assist in career and practice advancement.

CPD also aids in developing personal qualities that are required – but sometimes overlooked – to effectively perform a job or function at a higher standard with enhanced professionalism, capability and skill. Undertaking CPD supplements and complements the continuous 'on-the-job' experience gained through day-to-day practice, thereby ensuring a valuable and quality service is provided to clients and colleagues alike.

Plan and prepare

Solicitors are reminded to give thought to planning CPD that is relevant to their practice, as training is shown to be of greater benefit to solicitors when planned. There is always a need to broaden existing knowledge and to learn and develop further. It is impor-

tant to invest time in considering your CPD needs, and it is best, therefore, to take a planned approach to it. Planning training also enables solicitors to reflect and take account of their changing requirements and needs, and to identify where there are gaps in their knowledge and skill-set and how these may be overcome and addressed by attending and completing relevant CPD training.

The Society is mindful of the constant time pressures solicitors are under, which may result in constraints on solicitors spending time outside of the office to attend training courses or seminars. With the popularity of mobile and portable devices, there is an increasing appetite to use such platforms more and more frequently. With this in mind, the new scheme has increased the e-learning limit per CPD cycle. Online learning permits solicitors to decide when and where is convenient for them to complete CPD, and it offers the requisite flexibility to solicitors to find a way of putting disposable time to good use.

Solicitors are also reminded and encouraged to attend and complete CPD training throughout the CPD cycle and avoid a rush to fulfil their CPD obligations in the last few weeks of the year, which is often the busiest time for a legal firm or practice.

CPD regulations 2016

The new regulations introduce a number of changes to the CPD scheme, all of which are detailed in the new scheme booklet.

2016 CPD cycle?

The 2016 cycle will run from 1 January 2016 to 31 December 2016. There is no carry over of hours from one cycle to the next. Verification of compliance with the CPD regulations and scheme continues to be tied to your annual practising certificate application.

Minimum 2016 CPD requirement?

Solicitors to whom the regulations apply are required to complete a minimum of 18 hours' CPD during 2016, which must comprise the minimum requirements in both management and professional development skills and regulatory matters.

The 2015 regulations introduce a new requirement for a solicitor (including a senior practitioner) who is a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner' to undertake, as part of their minimum CPD requirement, a minimum of three hours of regulatory matters, of which at least two hours shall be accounting and anti-money-laundering compliance. Such solicitors must also complete a minimum of three hours' management and professional development skills per CPD cycle.

All other solicitors (those who are not a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner') must undertake a minimum of two hours of regulatory matters and a minimum of three hours' management and professional development skills.

There is a maximum limit of seven hours' CPD that may be completed within a single day, and a maximum of 50% of a solicitor's minimum CPD requirement (modified or otherwise) may be claimed for time spent in relevant e-learning and/or writing relevant material that is published in any one CPD cycle.

Ways of completing CPD

There are three different ways of undertaking the minimum 2016 CPD requirement – that is, by way of group study format and/or by electronic learning and/or writing relevant material that is published.

Group study

Group study means an organised session of CPD undertaken by three or more persons, for a period of not less than 30 minutes. Physical attendance by the solicitor is required. Therefore, the watching of a 'live feed' of a conference/seminar/training session may not be claimed as group study (but may be claimed as electronic learning).

E-learning

E-learning is the provision of education or training (or both) that is generated, communicated, processed, sent, received, recorded, stored and/or displayed by electronic means or in electronic form provided through:

- The internet or other computer network connections, sound only, sound and vision formats, or a combination of both,
- By the provision of an electronic file, a CD-ROM and/or DVD, and
- Other technologies and formats that may be advised from time to time.

A maximum of 50% of a solicitor's minimum CPD requirement (modified or otherwise) may be claimed for time spent in relevant e-learning.

Accordingly, a solicitor who practises on a full-time basis may claim a maximum of 50% of the minimum annual CPD requirement (that is, a maximum of nine hours' CPD during the 2016 cycle).

If a solicitor has a modified CPD requirement, (s)he may complete up to a maximum of 50% of his/her modified CPD requirement via electronic learning. For example, a solicitor with a modified 2016 CPD requirement of nine hours' CPD may complete a maximum of 4.5 hours CPD via e-learning during the 2016 cycle.

SUMMARY OF CHANGES INTRODUCED BY 2016 CPD REGULATIONS

	2015 CYCLE	2016 CYCLE	2017 CYCLE
Minimum overall CPD requirement	16 hours (which must comprise the minimum requirements in both management and professional development skills and regulatory matters)	18 hours (which must comprise the minimum requirements in both management and professional development skills and regulatory matters)	20 hours (which must comprise the minimum requirements in both management and professional development skills and regulatory matters)
Minimum management and professional development skills requirement	Three hours	Three hours	Three hours
Minimum regulatory matters requirement	One hour	<p>A solicitor (including a senior practitioner) who is a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner' is required to undertake a minimum of three hours of regulatory matters, of which at least two hours shall be accounting and anti-money-laundering compliance.</p> <p>All other solicitors (who are not a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner' are required to undertake a minimum of two hours of regulatory matters</p>	
Maximum daily CPD limit	Seven hours	Seven hours	Seven hours
Group study requirement	Three or more people (includes a 'live feed' of a conference/seminar)	Physical attendance is required, in a group of three or more people (does not include a 'live feed' of a conference/seminar)	
Maximum e-learning limit	Five hours	Nine hours	Ten hours
Maximum 'writing relevant material that is published' limit	Three hours	Nine hours	Ten hours
Modification of the minimum 2016 CPD requirement	<p>Permitted in certain specified circumstances.</p> <p>The minimum one hour's regulatory matters requirement may not be reduced proportionately and must always be complied with</p>	<p>Permitted in specified circumstances.</p> <p>A solicitor (including a senior practitioner) who is a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner' is required to undertake as part of his/her modified CPD requirement at least three hours of regulatory matters, of which at least two hours shall be accounting and anti-money-laundering compliance.</p> <p>All other solicitors (who are not a 'sole practitioner' or a 'compliance partner' and/or an 'anti-money-laundering compliance partner') are required to undertake a minimum of two hours of regulatory matters.</p>	
Attendance at meetings of committees and/or working groups of the Society or other law-related professional bodies	Maximum of seven hours (general CPD only) may be claimed per cycle	Maximum of seven hours (any category) may be claimed per cycle	
Performing adjudicative functions	Maximum of seven hours (general CPD only) may be claimed per cycle	Maximum of seven hours (any category) may be claimed per cycle	

A senior practitioner may complete a maximum of 1.5 hours CPD (being 50% of the modified CPD requirement for a senior practitioner) by e-learning during 2016.

Publishing

Written relevant material that is published in a legal periodical or textbook may count for CPD. Solicitors should also note that reference to legal periodical also in-

cludes those published in printed form and/or online.

A maximum of 50% of a solicitor's minimum CPD requirement (modified or otherwise) may be claimed for time spent writing

a relevant article or section of a legal periodical or textbook.

Therefore, if a solicitor practises on a full-time basis, (s)he may claim a maximum of 50% of the minimum annual CPD

practice notes

requirement (that is, a maximum of nine hours' CPD during the 2016 cycle).

If a solicitor has a modified CPD requirement, (s)he may complete up to a maximum of 50% of his/her modified CPD requirement for time spent writing relevant material. For example, a solicitor with a modified 2016 CPD requirement of nine hours' CPD may complete a maximum of 4.5 hours CPD for time spent writing relevant material during the 2016 cycle.

A senior practitioner may claim a maximum of 1.5 hours CPD (being 50% of the modified CPD requirement for a senior practitioner) for time spent writing relevant material during 2016.

Modification of minimum requirement

The scheme continues to allow for modifications of the minimum CPD requirement, and the current scheme booklet details the particular circumstances in which the minimum CPD requirement may be reduced, such as:

- A senior practitioner,
- Maternity/parental/carers/adoptive leave,
- Illness/retirement/unemployment/substantive reasons cases,
- Part-time practice, and
- Part-year practice.

Solicitors should note that the minimum CPD requirement may not be modified to less than two hours of regulatory matters in each CPD cycle. However, if a solicitor (including a senior practitioner) is a sole practitioner or a compliance partner and/or an anti-money-laundering compliance partner, (s)he will be required to undertake, as all or part of his/her modified CPD obligations during each CPD cycle, at least three hours of regulatory matters, of which at least two hours shall be accounting and anti-money-laundering compliance.

Automatic audit

Solicitors should note that, in the event of a failure to comply with annual CPD requirements, they will be automatically required to provide proof of compliance with their CPD obligations for a period of two years, in addition to the cycle in which they failed to comply.

Other changes

Solicitors attending meetings of committees and/or working groups of the Society, or other law-related professional bodies, or performing adjudicative functions, are permitted to claim up to a maximum of seven hours' CPD (in any category).

The CPD regulations enable

the Society to require payment of a sum not exceeding €300 by way of contribution towards costs in situations where a solicitor has refused, neglected, or otherwise failed to respond appropriately in a timely manner, or at all, to the Society's correspondence in the course of an investigation as to compliance with the CPD regulations.

Clarification on all aspects of the scheme and detailed explanations of the available modifications are provided in the current scheme booklet.

Solicitors should also note that the CPD record card is available as a PDF to download from the Society's website. Solicitors can download and save the record card, and make changes to it electronically as required, in order that they may record all of their CPD hours in one convenient and central place. The idea is to assist solicitors keep track of their CPD hours on an ongoing basis, thus saving valuable time and energy at the end of the CPD cycle. Alternatively, solicitors can print out the record card as usual and fill it in by hand.

Further details may also be obtained by contacting the CPD Scheme Unit on tel: 01 672 4802, email: cpdscheme@lawsociety.ie.

Valerie Peart, chair, Education Committee



Unfair terms in building contracts – reminder

There has been an increase in the number of queries to the Conveyancing Committee about unfair terms in building contracts for new housing. The committee would like to remind the profession of the provisions of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, which apply to building contracts, and to the content of the *High Court order* obtained by the Director of Consumer Affairs, with the support of the Law Society, in December 2001. The text of 15 conditions that were declared by the court to be in breach of the regulations can be accessed on the 'Resources' subpage of the committee's page on the Society's website.

The High Court order also provides that conditions that have like effect as the 15 prohibited conditions are also in breach of the regulations.

Practitioners are also directed to the practice note published jointly by the Registrar of Solicitors and the committee in the December 2005 issue of the *Gazette* (www.lawsociety.ie/PN-unfairterms), which confirms that alleged breaches of the regulations will be considered as a complaint by the Society's Complaints and Client Relations Committee and, if any such complaint is upheld, it may be deemed to be misconduct and, if so found, will be dealt with accordingly.



Water charges update

The email address for vendors' solicitors contacting Irish Water has been changed to section48requests@water.ie.

The committee has been notified by the Department of the Environment, Community and Local Government that vendors' solicitors and vendors may use this new email address for correspondence relating to statements of amounts due, certificates of discharge, and statements that the owner is not liable for water charges, and by vendors' solicitors

for correspondence relating to notification of no net proceeds of sale and receipt of payment.

Solicitors acting for purchasers are reminded that they need not enquire with vendors' solicitors as to whether vendors of dwellings have discharged water charges, as water charges are not a charge on dwellings. Only solicitors acting for vendors of dwellings have obligations under section 48 of the *Environment (Miscellaneous Provisions) Act 2015*.

Practitioners are also reminded that section 47 of the above act obliges an owner of a dwelling to register with Irish Water or, if not in occupation, notify Irish Water that he/she is not the occupier and provide details (the date of commencement of any agreement for the occupation of the dwelling, and the name of each person with whom the owner has such an agreement for occupation) within 20 working days of any change in occupation of the dwelling.

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 R Lynch, a solicitor formerly practising in the firm of Greg Ryan, Solicitor, at 9 Upper Mount Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2011* [3013/DT90/14]

Law Society of Ireland (applicant)
John R Lynch (respondent solicitor)

On 28 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 6 May 2003, given by him to the complainant in respect of named clients over property situate at Dublin,
- 2) Failed to reply adequately or at all to the complainant's correspondence in relation to his undertaking given on behalf of named clients dated 6 May 2003 over property situate at Dublin and, in particular, letters dated 14 June 2011, 5 July 2011, 18 October 2011, and 9 November 2011 respectively,
- 3) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 5 November 2003, given by him to the complainant in respect of named clients over property situate at Dublin,
- 4) Failed to reply adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients dated 5 November 2003 over property situate at Dublin and, in particular, letters dated 23 June 2008, 5 April 2011, 18 October 2011, 9 November 2011, and 28 March 2012 respectively,
- 5) Failed to comply expeditiously, within a reasonable time, or at

- all with an undertaking dated 1 November 2005, given by him to the complainant in respect of named clients over property situate at Dublin,
- 6) Failed to reply adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients dated 27 April 2006 over property situate at Dublin and, in particular, letters dated 5 October 2009, 22 March 2011, 18 October 2011, and 9 November 2011 respectively,
- 7) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 27 April 2006, given by him to the complainant in respect of named clients over property situate at Co Dublin,
- 8) Failed to reply adequately or at all to the complainant's correspondence in respect of his undertaking given on behalf of named clients over property situate at Co Dublin and, in particular, letters dated 12 March 2009, 28 January 2010, 18 October 2011, and 9 November 2011 respectively,
- 9) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 17 May 2005, given by him to the complainant in respect of a named client over property situate at Co Dublin,
- 10) Failed to reply adequately or at all to the correspondence of the complainant in respect of an undertaking given on behalf of a named client over property situate at Co Dublin and, in particular, letters dated 2 June 2006, 27 October 2009, 10 December 2011, 3 March 2011, 24 May 2013, 8 August 2013, and 14 August 2013 respectively,

- 11) Failed to comply expeditiously, within a reasonable time, or at all with two undertakings dated 14 November 2005 and 20 November 2006 respectively, given by him to the complainant in respect of named clients over property situate at Dublin,
- 12) Failed to reply adequately or at all to the correspondence of the complainant in respect of his undertakings given on behalf of named clients dated 14 November 2005 and 20 November 2006 over property situate at Clontarf, Dublin 3, and, in particular, letters dated 22 November 2006, 28 November 2007, 19 December 2007, 23 June 2009, 10 September 2009, 27 October 2009, 16 June 2010, 23 June 2010, 14 July 2010, 15 December 2010, 7 November 2011, 12 March 2012, 23 July 2012, 20 August 2012, 21 September 2012, 6 March 2013, 4 April 2013, 24 May 2013, 8 August 2013, and 14 August 2013 respectively.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €3,000 to the compensation fund,
- 3) Pay a contribution of €5,000 towards the whole of the costs of the Society.

In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin & Company, Solicitors, Kennedy Buildings, 24 Main Street, Tallaght, Dublin 24, and in the matter of the *Solicitors Acts 1954-2011* [15089/DT58/15]
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)

The Solicitors Disciplinary Tribunal considered a complaint against the respondent solicitor on 29 October 2015 and found her guilty of professional misconduct in that she:

- 1) Failed to ensure there was furnished to the Society an accountant's report for the year ended

31 May 2014 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),

- 2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €3,000 to the compensation fund,
- 3) Pay the whole of the costs of the Law Society or in default of agreement to be taxed by a taxing master of the High Court.

In the matter of Michael Kieran Griffin, solicitor, Kilkerrin House, Currabeg, Ovens, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [10174/DT158/14; 10174/DT159/14; 10174/DT160/14; High Court record 2015 no143 SA]
Law Society of Ireland (applicant)
Michael Kieran Griffin (respondent solicitor)

On 16 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

10174/DT158/14

- 1) Failed to comply with an undertaking dated 25 June 2003, furnished to Bank of Ireland in respect of his named clients and property in Co Cork, in a timely manner or at all,
- 2) Failed to respond to the Society's letters of 21 November 2012 and 30 July 2014 within the time provided, in a timely manner, or at all,
- 3) Failed to attend a meeting of the Complaints and Client Relations Committee on 30 September 2014, despite being required to attend.

regulation

10174/DT159/14

- 1) Failed to comply with an undertaking furnished to Bank of Ireland on 8 July 2008 in respect of his named clients and borrowers and property in Co Limerick in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 21 November 2012, 20 June 2013, 2 August 2013, 5 September 2013, and 1 October 2013 within the time provided, in a timely manner, or at all,
- 3) Failed to comply with the directions of the Complaints and Client Relations Committee made at its meeting of 3 September 2013 and communicated in detail to the solicitor by letter dated 5 September 2013,
- 4) Failed to attend the Complaints and Client Relations Committee meetings of 3 September 2013 and 15 October 2013, despite being required to so attend.

10174/DT160/14

- 1) Failed to comply with two undertakings furnished with his authority on 1 April 2008 in respect of a named client and property at Ballincollig, Co Cork, being part of a named folio, Co Cork, in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence of 21 November 2012, 24 June 2013, and 2 August 2013 within the time provided, in a timely manner, or at all,
- 3) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting of 3 September 2013 and communicated to him by letter dated 5 September 2013 in a timely manner or at all,
- 4) Failed to attend the Complaints and Client Relations Committee meetings of 3 September 2013 and 15 October 2013,

despite being required to attend.

The tribunal recommended that the matter be sent forward to the High Court and, on 2 November 2015, the High Court ordered that:

- 1) The respondent solicitor not be entitled to practise 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 Law Society of Ireland,
- 2) He pay a sum of €15,000 to the compensation fund,
- 3) He pay the whole of the costs of the Law Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Cindy McCarthy Yates, a solicitor previously practising as McCarthy Solicitors at 5 The Old Market, Market Square, Bandon, Co Cork, and in the matter of the Solicitors Acts 1954-2011 [12313/DT86/13 and High Court 2014 no 83 SA]

Law Society of Ireland (applicant) Cindy McCarthy Yates (respondent solicitor)

On 25 March 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

- 1) Failed to comply with an undertaking dated 2 February 2011 furnished to Bank of Ireland Mortgage Bank in relation to property at Co Cork and her named clients and borrowers in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, to the Society's emails of 1 November 2012, 2 January 2013, and 29 January 2013 in a timely manner or at all,
- 3) Failed to attend the Com-

plaints and Client Relations Committee on 7 February 2013, despite being required to do so.

The tribunal recommended that the matter be sent forward to the High Court and, on the 2 November 2015, in proceedings 2014 no 83 SA, the High Court ordered that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay to the Law Society the costs of the proceedings before the disciplinary tribunal and the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Cindy McCarthy Yates, a solicitor previously practising as McCarthy Solicitors at 4 The Gully, Bandon, Co Cork, and in the matter of the Solicitors Acts 1954-2011 [12313/DT24/14; 12313/DT44/14; 12313/DT79/14; 12313/DT86/14; High Court record 2015 no 116 SA]
Law Society of Ireland (applicant) Cindy McCarthy Yates (respondent solicitor)

12313/DT24/14

On 21 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 August 2012 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- 2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

12313/DT44/14

On 21 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages in respect of her named clients and their customers and property at Co Cork, furnished on 15 July 2009, in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 14 May 2013, 4 June 2013, 20 June 2013, 11 July 2013, 30 July 2013, 26 September 2013, and 3 October 2013 within the time prescribed, in a timely manner, or at all,
- 3) Failed to comply with the direction made by the Complaints and Client Relations Committee on 25 July 2013 that (a) she pay a €500 contribution towards the costs of the Society, and that (b) she furnish an update to the Society no later than 1 September 2013 in respect of the complaint.

12313/DT79/14

On 21 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations*, in a timely manner or at all.

12313/DT86/14

On 21 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to comply with an undertaking dated 10 November 2011, furnished to Bank of Ireland Mortgages in respect of her named clients and their borrowers and property at Co Cork in a timely manner or at all,



- 2) Failed to attend the meeting of the Complaints and Client Relations Committee on 24 September 2013, despite being required to do so by letter dated 17 September 2013.

The tribunal, in the four matters, recommended that the matters be sent forward to the High Court and, on 2 November 2015, in proceedings 2015 no 116 SA, the High Court ordered that the name of the respondent solicitor be struck from the Roll of Solicitors.

In the matter of Robert Sweeney, a solicitor previously practising as Robert Sweeney, First Floor, Crossview House, High Road, Letterkenny, Co Donegal, and in the matter of the Solicitors Acts 1954-2011 [10658/DT130/14; 10658/DT27/15; 10658/DT32/15; 10658/DT39/15; High Court record 2015 no 117 SA]

Law Society of Ireland (applicant) Robert Sweeney (respondent solicitor)

On 30 June 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in four separate referrals from the Society to the disciplinary tribunal as follows:

10658/DT130/14

- 1) Allowed a deficit of client funds in the practice of €27,190 as of 31 October 2013,
- 2) Allowed a deficit of at least €107,700 of clients' funds in the practice as of 30 January 2014,
- 3) Failed to account to his client for the sum of €25,000 received as a deposit, as set out at paragraph 4.3 and paragraph 5.3 of the investigation report of 19 December 2013,
- 4) Misled the Regulation of Practice Committee at its meeting on 22 January 2014 by indicating that the bank draft in relation to the sale deposit had either been lost or mislaid, when it subsequently transpired that same had been lodged to the

solicitor's personal AIB bank account on 12 November 2012,

5) Misled the Regulation of Practice Committee at its meeting on 22 January 2014 by indicating that the proceeds of a sale were in the solicitor's client account, when it subsequently transpired that part of the sale moneys, namely a deposit of €43,000, had been lodged to the solicitor's personal AIB bank account on 11 October 2013,

- 6) In five different instances, lodged €129,200 of clients' moneys to the solicitor's personal bank account. in breach of regulation 4,
- 7) Failed to stamp 38 deeds, as set out in appendix 2 of the investigation report of 19 December 2013,
- 8) Submitted deeds for stamping with an updated deed, notwithstanding the fact that he was in funds to stamp the deed on closing, as set out in paragraph 5.7 of the investigation report of 19 December 2013,
- 9) Used client funds to pay stamp duty penalties, as set out in paragraph 4.4 of the investigation report of 19 December 2013,
- 10) Failed to provide vouching documentation for a payment of €15,000, as set out in paragraph 4.10 of the investigation report, and subsequently gave an incorrect explanation as to the source of such funds to the Regulation of Practice Committee at its meeting on 22 January 2014,
- 11) Requisitioned client account cheques for registration fees, but never forwarded the said cheques to the Property Registration Authority and never registered the documentation,
- 12) Transferred professional fees twice, causing a shortfall in relation to a client purchase file of €785.

10658/DT27/15

- 1) Failed to comply in a timely manner or at all with an undertaking dated 31 October 2012

to the complainant in respect of a property at Clondalkin, Dublin 22, owned by a named client,

- 2) Failed to comply in a timely manner or at all with an undertaking dated 21 December 2010 to the complainant in respect of a property at Loughlinstown, Co Dublin, owned by named clients,
- 3) Failed to respond adequately or at all to correspondence from the complainant in respect of one or more of the above undertakings,
- 4) Failed to respond adequately or at all to correspondence from the Society in respect of one or more of the above undertakings.

10658/DT32/15

- 1) Failed to comply in a timely manner or at all with an undertaking dated 24 June 2010 to the complainant in respect of his named client,
- 2) Failed to respond adequately or at all to correspondence from the complainant in respect of the above,
- 3) Failed to respond adequately or at all to correspondence from the Society in respect of the above.

10658/DT39/15

- 1) Failed to comply in a timely manner or at all with the following undertakings: undertaking dated 21 June 2010 in relation to property in Menlough, Co Galway, and his named clients (complaint one); undertaking dated 21 October 2009 in respect of property in Bray, Co Wicklow, in respect of named clients (complaint two); undertaking dated 11 June 2010 in relation to property at Kells, Co Meath, and in respect of his named clients (complaint three); undertaking of 1 March 2011 in respect of property in Kinsealy, Co Dublin, and in respect of his named client (complaint four); undertaking dated 21 September 2010 in respect

of property at Blackrock, Co Dublin, in respect of his named client (complaint five); undertaking of 2 March 2011 in relation to property at Sallynoggin, Co Dublin, in respect of his named client (complaint six); undertaking of 29 October 2010 in relation to property at the Tenters, Dublin 8, in respect of his named clients (complaint seven); undertaking of 23 March 2011 in relation to property at Trim, Co Meath, in respect of his named client (complaint eight); undertaking of 23 August 2010 in relation to property at Dublin 7 in respect of his named clients (complaint nine),

- 2) Failed to respond adequately or at all to correspondence with the Society in respect of one or more of the above undertakings.

The tribunal ordered that the four matters should go forward to the High Court and, on 2 November 2015, in proceedings entitled 2015 no 117 SA, the President of the High Court ordered on consent that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors, and
- 2) The respondent solicitor pay the whole of the costs of the Society, including witnesses' expenses, to be taxed in default of agreement.

In the matter of Robert Sweeney, a solicitor previously practising as Robert Sweeney, First Floor, Crossview House, High Road, Letterkenny, Co Donegal, and in the matter of the Solicitors Acts 1954-2011 [10658/DT189/13 and High Court record 2014 no 131 SA]

Law Society of Ireland (applicant) Robert Sweeney (respondent solicitor)

On 24 July 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

regulation

- 1) Allowed a shortfall of client funds in his practice of €168,816, as of 31 May 2012,
- 2) Allowed around 90 client ledger debit balances totalling €143,996, as of 31 May 2012,
- 3) Allowed undischarged stamp duty to remain in the office account, totalling €1,120,
- 4) Allowed further shortfalls on the client ledger client caused by the transfer of excess amounts for fees of €23,700,
- 5) Failed to keep books of account in accordance with the requirements of the *Solicitors Accounts Regulations*,
- 6) For purchases completed prior to 31 May 2012, allowed a minimum of 151 cases of unstamped deeds with a minimum of €371,949 of unpaid stamp duty,
- 7) Misled the committee at its meeting on 17 October 2012 with regard to the progress that was being made in respect to stamping the 151 unstamped deeds,
- 8) Lodged sales deposits to the office account in respect of two sales totalling €19,350, as set out in paragraph 3.4 of the report of 22 November 2012,
- 9) Lodged clients' moneys in the office account, in breach of the regulations, as set out in the investigating accountant's report of 14 June 2012.

The tribunal ordered that the matter should go forward to the High Court and, on 2 November 2015, in proceedings entitled 2014 no 131 SA, the President of the High Court ordered on consent that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay the costs of the Society before the disciplinary tribunal and the costs of the High Court proceedings, such costs to be taxed in default of agreement.

In the matter of Joseph A Chambers, a solicitor practising

as **Joseph A Chambers, Solicitor, Frances Street, Kilrush, Co Clare, and in the matter of the Solicitors Acts 1954-2011 [3889/DT13/15]**

Law Society of Ireland (applicant) Joseph A Chambers (respondent solicitor)

On 19 November 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he, up to the referral of this matter to the tribunal, had failed to:

- 1) Comply with part or all of the undertaking dated 23 April 2001 in a timely manner or at all,
- 2) Comply with part or all of the undertaking dated 1 February 2005 in a timely manner or at all,
- 3) Respond adequately to some or all of the correspondence dated 21 February 2012, 1 November 2013, 21 November 2013, and 7 January 2014 sent to him by the Law Society.

The tribunal ordered that:

- 1) The respondent solicitor stand censured,
- 2) The respondent solicitor pay a sum of €3,000 to the compensation fund, and
- 3) The respondent solicitor pay the sum of €4,000 plus VAT as a contribution towards the whole of the costs of the Law Society

In the matter of Thomas G Myles, a solicitor formerly practising as Myles & Co, Solicitors, 21 Hillside, Monaghan, Co Monaghan, and in the matter of the Solicitors Acts 1954-2011 [4961/DT192/13 and High Court record 2015 no 62 SA]
Law Society of Ireland (applicant) Thomas G Myles (respondent solicitor)

On 14 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to ensure that there

was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the regulations, in a timely manner or at all,

- 2) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal ordered that the matter go forward to the High Court and, on 23 November 2015, the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, with taxation in default of agreement,
- 3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Thomas G Myles, a solicitor formerly practising as Myles & Co, Solicitors, 21 Hillside, Monaghan, Co Monaghan, and in the matter of the Solicitors Acts 1954-2011 [4961/DT106/14 and High Court record 2015 no 81 SA]
Law Society of Ireland (applicant) Thomas G Myles (respondent solicitor)

On 18 June 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to honour an undertaking, dated 30 November 2009, given by him to the complainant to discharge his fees of €5,992.21 for the proceeds of costs to be received in a named case expeditiously, within a reasonable time, or at all.

The tribunal ordered that the matter go forward to the High Court and, on 23 November 2015,

the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, with taxation in default of agreement,
- 3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Thomas G Myles, a solicitor formerly practising as Myles & Co, Solicitors, 21 Hillside, Monaghan, Co Monaghan, and in the matter of the Solicitors Acts 1954-2011 [4961/DT110/14 and High Court record 2015 no 80 SA]
Law Society of Ireland (applicant) Thomas G Myles (respondent solicitor)

On 18 June 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 6 January 2004, given by him on behalf of named clients to the complainant financial institution for a property at Co Monaghan,
- 2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 4 April 2006, 3 July 2006, 2 July 2008, 11 January 2010, 2 February 2010, 4 May 2010, 16 June 2010, 4 March 2011, 24 March 2011, 8 April 2011, and 17 April 2012 respectively,
- 3) Failed to reply adequately or at all to the Society's correspondence, in particular, letters dated 12 November 2013, 17 December 2013, 13 January 2014, and 5 August 2014 respectively,
- 4) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated

21 December 2005, given by him to the complainant on behalf of a named client over property at Co Cavan,

- 5) Failed to reply adequately or at all to the complainant's letters dated 9 January 2006, 18 April 2006, 23 May 2007, 20 June 2008, 19 May 2009, 2 February 2010, 24 May 2010, 16 June 2010, 25 June 2010, 13 October 2010, 8 April 2011, 20 September 2011, 17 April 2012, and 29 November 2012 respectively.

The tribunal ordered that the matter go forward to the High Court and, on 23 November 2015, the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, with taxation in default of agreement,
- 3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Richard Grogan, solicitor, of Richard Grogan & Associates, 16-17 College Green, Dublin 2, and in the matter of the Solicitors Acts 1954-2011 [4501/DT32/14]

*Named clients (applicants)
Richard Grogan (respondent solicitor)*

On 24 November 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaint, as set out in the applicant's formal letter of complaint dated 1 December 2013: the respondent solicitor failed to provide the applicants with a satisfactory service when dealing with a named case.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €5,000 as restitution to the applicants, without prejudice to any legal right of such party,
- 3) Pay the measured sum of €500 of the costs and expenses of the applicants.

In the matter of Michael McDarby, solicitor, practising as a solicitor in McDarby & Company, Solicitors, Glebe Street, Ballinrobe, Co Mayo, and in the matter of the Solicitors Acts 1954-2011 [4200/DT22/15]

*Law Society of Ireland (applicant)
Michael McDarby (respondent solicitor)*

On 26 November 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with part or all of the undertaking dated 25 April 2007 to the complainant in a timely manner or at all.

The tribunal ordered that:

- 1) The respondent solicitor do stand censured,
- 2) The respondent solicitor pay a sum of €2,500 to the compensation fund, and
- 3) The respondent solicitor pay the sum of €2,000 towards the whole of the costs of the Law Society.


In the matter of Eoin M Dee, a solicitor previously practising as Eoin Dee, Solicitors, Thomas House, 47 Thomas Street, Waterford, and in the matter of the

Solicitors Acts 1954-2011 [8243/DT05/15 and High Court record 2015 no 214 SA]

*Law Society of Ireland (applicant)
Eoin M Dee (respondent solicitor)*

On 29 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations 2001*, in a timely manner or at all, having ceased practice on 31 January 2014.

The tribunal ordered that the matter go forward to the High Court and, on 18 January 2016, the High Court ordered that:

- 1) The respondent solicitor be suspended from practising as a solicitor until such time as he files his closing accountant's report with the Society,
- 2) The respondent solicitor pay the whole of the costs of the Society before the Solicitors Disciplinary Tribunal and the High Court, to be taxed  in default of agreement.

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Diploma in Environmental and Planning Law	Friday 8 April	€2,400
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Certificate in Decision-Making Capacity and Support	Saturday 27 February	€1,300
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THE REGULATION OF AIRCRAFT LEASES

The regulation of air carriers in Ireland and other member states of the European Union requires that carriers must have aircraft at their disposal either through ownership or dry lease, at all times, in order to be granted or to maintain in force an air-carrier operating licence. An 'operating licence' is the authorisation permitting an air carrier to provide air services, which means carrying passengers, cargo and/or mail for remuneration and/or hire. Thus, possession of aircraft is fundamental to the authorisation of air carriers to trade. So how are aircraft leases regulated in the context of air-carrier operating licences in Ireland?

Come fly with me

Pursuant to the *Aviation Regulation Act 2001* and the *European Communities (Common Rules for the Operation of Air Services in the Community) Regulations* (SI 426 of 2008), the competent licensing authority for air carriers in Ireland is the Commission for Aviation Regulation (CAR). It is responsible for implementing and enforcing *Regulation (EC) 1008/2008* on the licensing of air carriers within the community. For the purposes of the regulation, a carrier licenced by an EU member state is a 'community air carrier'. The overarching objective of aviation regulation is safety. Chapter II of the regulation sets out the requirements in relation to air-carrier operating licences, including in relation to leases. Article 3(2) states that the competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of chapter II of the regulation are not complied with.

Article 4 of the regulation sets out the criteria for the grant of

an air-carrier licence. By virtue of article 8, air carriers must be able to demonstrate continued compliance with the criteria set out in article 4 on an ongoing basis in order to maintain their licence in force. Article 4(c) sets out the criteria in relation to the possession of aircraft. Articles 5, 8 and 13 include provisions requiring leases to be notified to the competent licensing authority. Article 13 sets out requirements in relation to the prior approval of certain leases.

The provisions of the regulation apply to all aircraft leased to air carriers, including helicopters, executive jets, smaller propeller driven aircraft and cargo airplanes, as well as turboprops, narrow and wide-body jet aircraft. Current air-carrier activity in Ireland involves 15 air carriers operating 27 different types of aircraft, in all the categories mentioned above.

Fly me to the moon

The regulation defines two types of lease: 'wet lease' and 'dry lease'. Finance leases where ownership of the plane is intended to ultimately pass are considered ownership arrangements. A dry lease means an agreement between undertakings pursuant to which the aircraft is operated under the air operator certificate (AOC) of the lessee. A wet lease means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor. An AOC is a certificate delivered to an undertaking confirming that the operator has the professional ability and organisation to ensure the safety of operations specified in the certificate, as provided in the relevant provisions of commu-

nity or national law, as applicable. In Ireland, this is granted by the Irish Aviation Authority (IAA). Air carriers require both an air-carrier operating licence (ACOL) and an AOC to trade.

The requirements in relation to each type of lease are set out in article 13 of the regulation, which states that a community air carrier may have one or more aircraft at its disposal through dry or wet lease agreement. They may freely operate wet leased aircraft regis-

tered within the community, except where this would lead to endangering safety. In addition, a dry lease agreement to which a community air carrier is a party or a wet lease agreement under which the com-

munity air carrier is the lessee of the wet-leased aircraft is subject to prior approval, in accordance with applicable community or national law on aviation safety. Furthermore, a community air carrier wet leasing aircraft registered in a third country from another undertaking must obtain prior approval for the operation from the competent licensing authority and must show that equivalent safety standards are met and (a) exceptional needs, or (b) leasing is necessary to satisfy seasonal demands, or (c) leasing is necessary to overcome operational difficulties. The competent authority may refuse to grant an approval if there is no reciprocity as regards wet leasing between the member state concerned or the community and the third country where the wet-leased aircraft is registered.

The provisions mentioned above are in addition to the requirements to notify leases pursuant to reporting obligations set out

separately in articles 5 and 8 of the regulation, dealing with financing and maintenance in force of the operating licence. The requirements apply to both head leases and subleases. Furthermore, there is a parallel reporting obligation on AOC holders to the IAA in respect of leases, pursuant to *Regulation (EU) no 965/2012* laying down technical requirements and administrative procedures related to air operations. As matter of practice, notifications of article 13(2) leases are made initially to the IAA within the context of that parallel procedure, with notifications under the other provisions of article 13 and articles 5 and 8 made to the CAR.

747

Aviation regulators closely monitor possession of aircraft. Prior notification provides regulators with an opportunity to discuss with an air carrier the potential effects of a lease on the maintenance in force of the operating licence. There is overlap in the issues that regulators take into consideration when notified of a lease pursuant to the licence and those that aircraft lessors address in the terms of the lease.

Topics considered include the following:

- *Air operator certificate*: change of aircraft type, pilot ratings, crew training, operational capability and timing.
- *Finance*: details of financing of aircraft purchase/leasing, including the cost of leasing, the terms and conditions of contracts including payment currency, security deposits, maintenance and maintenance reserves, terms of lease and delivery.
- *Maintenance*: maintenance programme, deposits, reserves and airworthiness.

‘ Possession of aircraft is fundamental to the authorisation of air carriers to trade ’

The provisions of the regulation apply to all aircraft leased to air carriers, including helicopters, executive jets, smaller propeller driven aircraft and cargo airplanes, as well as turboprops, narrow and wide-body jet aircraft



Watch out for them chemtrails

- **Insurance:** Regulation (EC) 785/2004 sets out requirements for air carriers and aircraft operators and sets out details of levels of insurance by aircraft maximum take-off weight, which relates to aviation specific liability in respect of passengers, baggage, cargo and third parties. Separate to insurance for damage/loss of aircraft.
- **Reporting and inspections:** corporate and transaction documents, business plans, insurance, key personnel change notification and passports.
- **Registration on national register:** generally required; facilitates airworthiness inspections.
- **Counter party:** reciprocity of leasing in third country, trade sanctions, consents for sublease.


A number of these issues speak to the safe operation of the aircraft, which is the main priority of aviation regulators.

Occasionally, possession may be lost by non-payment of fees to third parties, such as airport authorities or air navigation service providers. From a regulatory perspective, this raises the questions of suspension or revocation of the licence on the grounds of (a) lack of possession or (b) inability to meet financial commitments over a 12-month horizon. In these circumstances, lessors may also want to move quickly to repossess aircraft at the time of lessee default. This is especially the case when such third parties have the power to exercise a lien over the aircraft and prevent repossession prior to their fees

being paid. For example, failure to pay air navigation service charges entitles the IAA to exercise a lien over aircraft pursuant to section 67 of the *Irish Aviation Authority Act 1993*. Similarly, failure to pay airport charges at Dublin Airport allows the relevant airport authority to exercise a lien over aircraft in order to force the discharge of the debt owed to it, pursuant to section 40 of the *Air Navigation and Transport (Amendment) Act 1998*.

Paper plane

In summary, aviation regulators may notify an air carrier that it may not operate a plane due to non-compliance with one or more requirements related the licensing issues identified above, as opposed to disapproving a lease of itself.

From a regulators perspective, the outcome is the same: the aircraft is not in operation. From the perspective of the parties to a lease, that outcome may be very detrimental to the value of the lease agreement between them. The relative brevity of the provisions in Regulation (EC) 1008/2008 expressly mentioning the approval of leases should not be read in isolation. They must be considered in the wider context of the grant or maintenance in force of an air carrier operating licence, as it is the impact of the possession of aircraft on continued, safe, operations that is the key issue of concern .

David Hodnett, solicitor, is the deputy commissioner for Aviation Regulation.

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
9 March	WORKPLACE RELATIONS ACT, 2014 – THE PRACTICAL IMPLICATIONS FOR EMPLOYMENT LITIGATION	€150	€176	3 General (by Group Study)
11 March	LAW SOCIETY SKILLNET – MASTERCLASS IN CONSTRUCTION ADJUDICATION This course is in response to the Construction Contracts Act, 2013 and it will be very relevant for those who act for parties in construction disputes – it will run over three weekends. (Friday & Saturday)	€1,105	€1,300	Full General and Management & Professional Development Skills CPD requirement for 2016 (provided relevant sessions attended)
Start date 12 March	LAW SOCIETY FINUAS NETWORK EXECUTIVE LEADERSHIP MANAGEMENT PROGRAMME Leadership in Perspective - Sat 12 March (9.30-5.00pm) Leading Self - Fri 8 April (2.00-6.00pm) & Sat 9 April (9.30-5.00pm) Leading People - Fri 22 April (2.00-5.30pm) & Sat 23 April (9.30-5.00pm) Leading Practice - Fri 13 May (9.30-5.00pm) and Sat 14 May (9.30-5.00pm) – for the full programme contact Finuas@lawsociety.ie	€2,950	€3,500	Full CPD requirement for 2016 (provided relevant sessions attended)
15 March	THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND STATES OF EMERGENCY Joint Honorary Lecture in honour of Michael O’Boyle – presented in partnership with Human Rights committee & the Department of Foreign Affairs & Trade		Complimentary	1 General (by Group Study)
12 May	THE SECRET TO A SUCCESSFUL PRACTICE: WELLNESS FOR SUCCESS: Stress, burnout and unprofitable work practices need not hold you back any longer. This one-day event will change the way you work so you are calmer, more energised and more in control.	€150	€176	5 Management & Professional Development Skills (by Group Study)
12 May	ESSENTIAL SOLICITOR UPDATE 2016 PART I In partnership with Leitrim, Longford, Roscommon, Sligo and Midlands Bar Associations Landmark Hotel, Carrick-on-Shannon, Co Leitrim - Practice Regulation - Financial Compliance - Assisted Decision Making (Capacity) Act 2015 - Criminal Litigation - Bail, custody, advising clients in Garda stations, unconstitutional evidence		€75 (Parts I and II €160 - full 2016 Regulatory Matters and M & PD Skills CPD requirement)	1 General, 2 M & PD Skills & 1 Regulatory Matters - Financial Compliance (by Group Study)
13 May	ESSENTIAL SOLICITOR UPDATE 2016 PART II Landmark Hotel, Carrick-on-Shannon, Co Leitrim - Workplace Relations Act 2015 - Conveyancing update - Technology update for the small practice - Legal Services Regulation Act 2015: general overview and impact - Probate Practice: drafting, taxation and will trusts - Regulation Compliance - anti-money laundering - Legal costs: the current and future regimes		€105 (Parts I and II €160 - full 2016 Regulatory Matters and M & PD Skills CPD requirement) Hot lunch and networking drinks included in price	2 General, 2 M & PD Skills & 2 Regulatory Matters (including anti-money laundering compliance) (by Group Study)
19 May	IN-HOUSE AND PUBLIC SECTOR COMMITTEE PANEL DISCUSSION Challenges and opportunities facing the in-house sector		€25	2.5 M & PD Skills (by Group Study)

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WILLS

Carolán, James Enda (otherwise Enda) (deceased), late of 55 Mountain View Road, Ranelagh, Dublin 6, who died on 13 December 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Grainne Butler, Orpen Franks, Solicitors, 28 & 30 Burlington Road, Dublin 4; tel: 01 637 6200, fax: 01 637 6262, email: grainne.butler@orpenfranks.ie

Gately, Elizabeth (deceased), formerly of 14 Kinahan Street, off Infirmaroy Road, Dublin 7, who died on 16 April 2014 and who resided at Kilbrey Recuperation and Nursing Care, Curragha, Ashbourne, Co Meath, at the date of her death. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Tom O'Hare, O'Hare O'Dwyer, Solicitors, Greenfield Road, Sutton, Dublin 13; tel: 01 839 6455, email: tom@ohareodwyer.ie

Gray, Michael (deceased), late of 174 Balrothery Estate, who died on 5 September 2014. Would any person holding or having knowledge of the whereabouts of any will executed by the above-named deceased please contact Regan Solicitors, 38/39 Fitzwilliam Square, Dublin 2; tel 01 687 4100, email: hello@regansolicitors.ie

RATES**professional notice rates****RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

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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*.

Kerfoot Matthews, Elsie (deceased), late of 54 Golden Lane, Dublin 8, formerly of 14 Werberg Street, Dublin 8, who died on 12 January 2016. Would any person having any knowledge of the whereabouts of any will executed by the above-named deceased, or if any firm is holding same, please contact Richard McGuinness & Co, Solicitors, 24 Sundrive Road, Dublin 12; tel: 01 492 1544, email: info@richardmcguinness.ie

Maguire, Patricia (deceased), late of Wheatfield, Straffan, Co Kildare, who died on 26 November 2014. Would any person having knowledge of any will executed

by the above-named deceased please contact Mary McKeever, Eugene F Collins, Solicitors, Temple Chambers, 3 Burlington Road, Dublin 4; tel: 01 202 6400, fax: 01 667 5200, email: mmckeever@efc.ie

Millington, John (deceased), late of 2 Swords Manor Court, Swords, Co Dublin, and formerly of 16 Limewood Road, Raheny, Dublin 5, who died on 14 December 2015. Would any person having knowledge of the whereabouts of any will of the above-named deceased please contact Lorraine Millington, 14 Limewood Road, Raheny, Dublin 5; tel: 087 247 3898,

email: elitechauffeurservices3@hotmail.com

Milner, Mary (née McGrath) (deceased), who died on 9 January 2016, late of 6 Laverna Avenue, Castleknock, Dublin 15, and formerly of 46 Castleknock Avenue, Castleknock, Dublin 15. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rochford Gibbons, Solicitors, 16/17 Upper Ormond Quay, Dublin 7; tel: 01 872 1499, email: info@johnrochford.ie

O'Donnell, Mary (deceased), late of No 5 Johnstown House,

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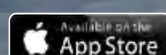
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professional notices

Ballygall Road East, Glasnevin, Dublin 11. Would any person having knowledge of any will made by the above-named deceased, who died on 24 May 2014, please contact Pdraig Duffy, Tully & Duffy, Solicitors, 49 Laurence Street, Drogheda, Co Louth; tel: 041 983 3833, email: pwduffy@eircom.net

Shanahan, Michael Francis (otherwise Frank) (deceased), who died on 4 January 2016, and **Carmel Shanahan (deceased)**, who died on 1 January 2016, both late of Rossoulty, Upperchurch, Co Tipperary. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact David Doyle, Butler Cunningham & Molony, Solicitors, Slievenamon Road, Thurles, Co Tipperary; tel: 0504 21857, email: info@bcmthurles.ie

Taylor, Margaret (deceased), late of 4C Bride Street, Dublin 8. Would any person having knowledge of a will made by the above-named deceased, who died on 17 July 2013, please contact Bernadette Barry & Co, Solicitors, 1 Castle Crescent, Monastery Road, Clondalkin, Dublin 22; tel: 01 244 4410, fax: 01 244 7267, email: info@bernadettebarry.com

Tuohy, Mary Bridget (deceased), late of Kilregane, Lorrha, Nenagh, Co Tipperary, who died on 23 December 2015. Would any person having knowledge of a will made by the above-named deceased please contact Anne Drury, 1 The Withey, Whimple, Exeter, Devon EX5 2QD, United Kingdom; tel: +44 1404 822978, email: pajdrury@yahoo.co.uk

MISCELLANEOUS

Notice to creditors in the estate of Margaret Taylor (deceased), late of 4C Bride Street, Dublin 8: notice is hereby given pursuant to section 49 of the *Succession Act 1965* that particulars in writing of all claims against the estate of the

above-named deceased, who died on 17 July 2013, where letters of administration were granted to the personal representative on 20 November 2015, should be sent to the undersigned solicitors for the personal representatives on or before 16 March 2016, after which date the assets will be distributed having regard only to the claims received. Please contact Bernadette Barry & Co, Solicitors, 1 Castle Crescent, Monastery Road, Clondalkin, Dublin 22; tel: 01 244 4410, fax: 01 244 7267, email: info@bernadettebarry.com

TITLE DEEDS

In the matter of the Landlord and Tenant (Ground Rents) Act 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: notice of intention to acquire fee simple (section 4) – an application by KW Real Estate plc

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises at the rear of the house and premises known as no 23 St Stephen's Green in the city of Dublin, held under a lease dated 12 May 1934 between (1) Mary Agnes Macaura and (2) Thomas Robert McCullough for a term of 99 years from 1 November 1933 (the 1934 lease), subject to the payment of the yearly rent of £70 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that KW Real Estate plc, being the person currently entitled to the lessee's interest in the 1934 lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Arthur Cox (solicitors for the applicants), Earlsfort Centre, Earlsfort Terrace, Dublin 2; ref: KE299/036

In the matter of the Landlord and Tenant Act 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 as amended and in the matter of an application by Michael Murphy, 14 Killucan Manor Green, Rathware, Mullingar, Co Westmeath, as the legal personal representative of Anna Marie Murphy, deceased

Take notice that any person having a freehold interest or any intermediate interest in all that the premises situate on Conlan Road in the town of Killybegs, barony of Banagh, parish of Killybegs and county of Donegal, and containing 0.006 hectares, held by way of indenture of assignment dated 8 October 1981 between William Hegarty of the one part and Anna Marie Murphy of the other part for all unexpired residue of the term of years granted by indenture of sublease dated 16 January 1926 between Sarah Brady of the one part and Mary Catherine Gallagher of the other part for the unexpired residue of the term of 99 years from 1 May 1908, subject to the yearly rent of ten shillings, in accordance with the indenture of lease dated 12 October 1908 between Robert Tyler Bustard and Robert David Cecil Bustard of the one part and Sarah Brady of the other part.

Take notice that Michael Murphy, as the legal personal repre-

sentative of Anna Marie Murphy, deceased, who died on 3 December 2012, and being the person by virtue of a grant of administration intestate currently entitled to the lessee's interest under the said lease and sublease, intends to apply to the county registrar for the county of Donegal for the acquisition of the freehold interest, together with all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest or an intermediate interest in the aforesaid property (or any part of same) is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Dermot G McDermott & Co (solicitors for the applicant), 1 Union Street, Sligo

In the matter of the of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Paul O'Brien

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0404 42832**

Take notice that any person having interest in the freehold estate of the following property: 77 Swords Road, Whitehall, Dublin 9, more particularly described in an indenture of lease dated 27 August 1935 and made between Michael Murphy of the first part, Matthew Carroll of the second part, and the Right Honourable Lord Mayor, Aldermen and Burgesses of the city of Dublin of the third part, for the term of 148 years from 25 March 1934, subject to the covenants on the lessee's part and conditions therein contained.

Take notice that Paul O'Brien intends 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 asserting that they hold a superior interest in the aforesaid property is 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, the said Paul O'Brien intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/

city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

Date: 4 March 2016

Signed: Lawlor Partners (solicitors for the applicants), 4 Arran Square, Arran Quay, Dublin 7

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Independent Trustees Company Limited

Take notice that any person having any interest in the freehold estate of the following property: known as 10 Bride Street, Loughrea, Co Galway, held under indenture of conveyance dated 26 August 1943 by Jane Daly of Moore Street, Loughrea in the county of Galway, to Bernard Lally of Bride Street, Loughrea in the county of Galway, whereas Michael Keogh, late of Bride Street, Loughrea, was in his lifetime a tenant from year to year to the Earl of Harewood at the yearly rent of £2.

Take notice that Independent

Trustees Company Limited intends to submit an application to the county registrar for the county of Galway for acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premise (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Sheehan & Co Solicitors (solicitor for the applicants), Augustine Court, St Augustine Street, Co Galway

In the matter of the Landlord and Tenant Acts 1967-2005 and

in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Dolores O'Donoghue of 107 Templeogue Road, Terenure, Dublin 6W, and in the matter of properties known respectively as 28 Leinster Square, Rathmines, Dublin 6, and that plot of ground at the rear of the property known as 28 Leinster Square, Rathmines, Dublin 6

Take notice that any person having any interest in the freehold estate of the following properties, namely, 28 Leinster Square, Rathmines, Dublin 6, held under indenture of lease dated 4 September 1928 and made between Godfrey Robert Wills Sanford and Howard Rundles Guinness of the first part, Amy Henrietta Wills Sanford Wills of the second part, and Charles Joseph Priest, Fredrick James Priest, Edward Percy Maybury Butler and Herbert Wood of the third part, for the term of 153 years from 25 March 1928, subject to the yearly rent of £38 sterling, and that plot of ground at the rear of the property known as 28 Leinster Square, Rathmines, Dublin 6, held under indenture of lease dated 9 March 1827 and made between Daniel



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Ereck and Jane Martha Ereck of the one part and Samuel Oldham of the other part for a term of 200 years from 25 March 1827 and subject to the yearly rent of £100.

Take notice that the applicant, Dolores O'Donoghue, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Paul Ferris & Co (solicitors for the applicant), Suite 227, The Capel Building, St Mary's Abbey, Dublin 7

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord

and Tenant (Ground Rents) (No 2) Act 1978

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the dwelling-house situate in Henry Street, then known as no 6 Henry Street but now known as no 7 Henry Street, aforesaid containing in breadth in the front to Henry Street aforesaid 18 feet, 4 inches or thereabouts, in breadth to the rear, 32 feet, 4 inches, and in depth from front to rear, 100 feet or thereabouts, held under lease dated 5 April 1819 between William Connelly of the one part and Samuel Thompson of the other part for a term of 999 years from 25 January 1819 at a yearly rent of £76 sterling.

Take notice that Arnott and Company Dublin Limited (now Arnotts Limited) and Fitzwilliam Real Estate Developments Limited, as tenant under the said lease, intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of their title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend

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

Date: 4 March 2016

Signed: Eversbeds (solicitors for the applicant), 1 Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the house situate on the south side of Henry Street, in the parish of Saint Mary's in the city of Dublin, now in the possession of the said Patrick Lowe, known as the house no 6-and-a-half in the said Henry Street, bounded on the north by Henry Street, on the east by Mr Thomas's holdings, on the West by Mr Thompson's holding, and on the south by Mr Ennis's concerns adjoining the rear of said street, containing in front to Henry Street aforesaid 19 feet, 6 inches and, from front to rear,

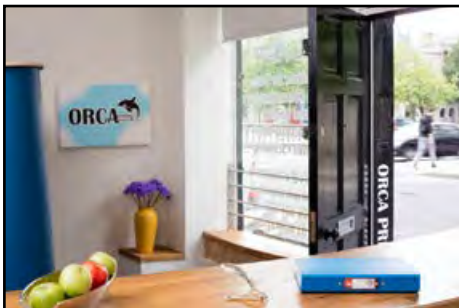
97 feet, together with out-houses and offices, held under lease dated 21 October 1831 between William Connelly of the one part and Patrick Lowe of the other part for a term of 199 years from 1 May 1831 at a rent of £63 sterling.

Take notice that Arnott and Company Dublin Limited (now Arnotts Limited) and Fitzwilliam Real Estate Developments Limited, as tenant under the lease, intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Eversbeds (solicitors for the applicant), 1 Earlsfort Centre, Earlsfort Terrace, Dublin 2



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Opening hours: 9-5 Monday to Friday, or by special arrangement.



In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those the back house or warehouse out-offices and stable at the rear of the dwelling-house, offices and premises situate in Henry Street in the city of Dublin, late in the possession and occupation of Patrick Lowe, now in the occupation of Benjamin Pemberton and Sons, shoemakers, and adjoining to the rear of the said dwellinghouse and offices situate also at Henry Street in the said city of Dublin, late in the tenancy and occupation of Samuel Thompson, now in the tenancy and occupation of George O'Neill, containing in depth to Proby's Lane, 45 feet, 6 inches, and in width to the common gateway or passage and door thereat, communicating as well to the out-offices of said George O'Neill and the said Benjamin Pemberton and Sons as to the said back house of warehouse, out-offices and stables, late in the tenancy of John Ennis, now in the occupation of the said Arnott & Company (Limited), partly 25 feet, 6 inches and partly 10 feet, together with the warehouse or loft over that part of the out-offices of said George O'Neill used as a stable, containing in depth to Proby's Lane 22 feet and in width to said common gateway or passage 23 feet, said passage communicating to the several premises aforesaid, said premises hereby demised namely the back house or warehouse out-offices and stable together with the warehouse or loft, being the warehouse and concerns formerly in the tenancy or occupation of Edward Allen, the father-in-law of John Ennis, but now in the tenancy and possession of the said Arnott and Company (Limited), said premises hereby demised being bounded on the north partly by

the concerns of the said George O'Neill and partly by the common lock-up yard 19 feet, 6 inches in depth and 18 feet, 8 inches in width, within said common gateway, the property of said Gerald Aylmer, on the south by Proby's Lane, on the east by the holdings in possession of Messrs Talty Murphy and Company, and on the west partly by said common gateway or passage and door thereat common to all said premises, partly by George O'Neill's concerns, and partly by holdings now or lately in possession of Mr Byrne, which said premises hereby demised are situate, lying, and being in the parish of St Mary and county of the city of Dublin, held under lease dated 7 November 1877 between Gerald Aylmer of the one part and Arnott & Company (Limited) of the other part for a term of 152 years from 29 September 1877 at a rent of £25 sterling.

Take notice that Arnott & Company (Limited) (now Arnotts Limited) and Fitzwilliam Real Estate Developments Limited, as tenant under the said lease, intend to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 4 March 2016

Signed: Eversheds (solicitors for the applicant), 1 Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of *Michael Carty and 40 Lower Leeson Street, Dublin 2*

Notice to any person having any interest in the freehold estate of the property known as 40 Lower Leeson Street, Dublin 2.

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

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

Date: 4 March 2016

Signed: Anthony Hanaboe (solicitors for the applicant), ME Hanaboe, Solicitors, 21 Parliament Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of *no 50 Lower Camden Street, Dublin 2, and in the matter of an application by JD Wetherspoon. Public Limited*

Company, having its branch office in Ireland and address for service of notices at 1-5 Carysfort Avenue, Blackrock, Co Dublin

Any person having any interest in the fee simple estate or any intermediate interest in the premises known as no 50 Lower Camden Street, in the parish of St Peter and city of Dublin, originally held under a lease dated 26 September 1808 from Joseph Mason to Olivia Hutton for a term of 11 years from 25 December 1807, subject to the yearly rent of £45.10.0 (€57.77), with a covenant for renewal every seven years for 300 years from 25 March 1805 that was never implemented and, since the expiry of the said lease to date, held under a yearly tenancy at the said yearly rent.

Take notice that JD Wetherspoon, Public Limited Company, being the body now holding the said yearly tenancy in the said premises, intends to apply to the county registrar for the city of Dublin for the acquisition of the fee simple estate and all intermediate interests in the said premises, and any party claiming that they hold the fee simple or any intermediate interest in the aforesaid premises is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said JD Wetherspoon, Public Limited Company, intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said premises are unknown and unascertained.

Date: 4 March 2016

Signed: William Fry (solicitors for the applicant), 2 Grand Canal Square, Dublin 2

credidi me felem vidisse

Close shave

Djovid Akramov, from Tajikistan, says he was stopped by police outside his house and taken to the police station in Dushanbe, where he was forcibly shaved, the [BBC](#) reports.

"They called me a Salafist, a radical, a public enemy. And then two of them held my arms while another one shaved half of my beard."

He is just one of hundreds of thousands of men in Tajikistan arrested in recent years for wearing a beard. Shaving beards is part of a government campaign against trends that are deemed "alien and inconsistent with Tajik culture".

Police in the Khatlon region have admitted to shaving off the beards of nearly 13,000 men. The action is part of the government's 'anti-radicalisation campaign' against the adoption of Islamic cultural practices in Tajik society. It appears to be a lost battle, however, with official data stating that 99% of the Tajik population are Muslim.



Calfskin cutbacks to save £80k a year

The centuries-old practice of printing laws on vellum in Britain is set to end from April, according to [The Guardian](#).

Labour MP Sharon Hodgson raised a point of order in the House of Commons after a supplier of vellum was given 30 days' notice by the parliamentary authorities that it would no longer be needed.

Under the plans, an expected

£80,000 a year would be saved by printing the laws on high-quality archival paper instead. Vellum lasts for thousands of years compared with the 500-year lifespan of high-quality paper.

Hodgson said: "All of our most important historical documents, from *Magna Carta* to the *Lindisfarne Gospels*, have been made by using vellum

and, because of this, have lasted through the ages so that future generations can appreciate and understand our shared history.

"That is why it was disappointing that such an important decision, with ramifications on the future of the craft and the conservation of our history, was pushed through without any prior consent of the House of Commons."

Paranoid visions for 'dumbass' high-rolling smugglers

Two men who were driving high in Idaho phoned 911 to turn themselves in and call off a police pursuit, [The Independent](#) reports. Except there was no police pursuit.

The two men were travelling from Las Vegas to Montana on 23 January 2015, having carried 20 pounds of marijuana over several state borders. Audio was released of a call to police by Leland Ayala-Doliente (22) and Holland Sward (23) who had pulled into a petrol station to call off the 'undercover police' they believed were chasing them

Ayala-Doliente: "Hi, uh, we're the two dumbasses that got caught trying to bring some stuff through your border. All your cops are just driving around us like a bunch of jack-wagons and I'd just like for



you guys to end it. If you could help me out with that, we would like to just get on with it."

911 operator: "You got caught doing what?"

Ayala-Doliente: "Okay, um, we kind of got spooked here trying to bring some stuff across your Idaho border ... and a bunch

of your cops driving around in a bunch of civilian cars not wanting to pick us up. I don't know what's the deal. I was just wondering if you could help

us out and just end it."

Officers found 20 pounds of marijuana inside a dog cage placed outside the car, along with \$567 in cash inside the car.

Drone slayer sued by hobbyist

A hobbyist whose drone was shot down by a Kentucky property owner is asking a court for \$1,500 in damages and a decision on who had rights to the airspace. The issue is whether John Boggs' drone was trespassing or flying in airspace within the jurisdiction of the federal government, the [Washington Post](#) reports.

The suit filed in a federal court in Louisville says that Boggs' drone was recording video of the horizon, woods and rooftops, and was not recording images of the property

owner or anyone else on his property.

The self-described 'drone slayer' and defendant William Merideth said: "In my mind, it wouldn't have been any different had he been standing in my backyard with a video camera."

The height of Boggs' drone is one issue in the case. Witnesses said the drone was flying below the trees, leading a judge to dismiss criminal charges against Merideth in October. Boggs says images captured from his drone show it was flying about 200 feet above the ground.



the not-for-profit
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THE CATHOLIC PRIMARY SCHOOLS MANAGEMENT ASSOCIATION

The CPSMA was established in order to ensure the advancement and support of education in Catholic Primary Schools in the Republic of Ireland. The CPSMA provides advice, guidance and information support to Ordinary Members and Patrons, with the objective of assisting them in the fulfilment of their responsibilities to Catholic Primary Schools.

The CPSMA offers advice and support for Chairpersons and Principals of Boards of Management in circa 2,900 schools. The CPSMA also collaborates with other management bodies and negotiates on behalf of schools with education partners, including the Department of Education and Skills. Representing those serving on Boards of Management of Catholic Primary Schools at a national level, the CPSMA provides additional services such as: advice on queries regarding general and employment issues, Board training in collaboration with other education partners, the Board of Management Handbook and CPSMA newsletter.

GENERAL SECRETARY

To assist the organisation to deliver on its mission, the CPSMA is seeking a suitable candidate for the position of General Secretary.

Reporting to the Board of Directors, the General Secretary is responsible for the successful leadership and management of the CPSMA, according to the strategic direction set by the Board of Directors. The focus of the role is the responsibility for strategic leadership of the CPSMA, proper management of staff, resources and services, implementation of good governance and effective financial management. The General Secretary is also responsible for handling all media enquiries.

We are seeking an experienced leader with strong management and influential skills, strategic level HR expertise, and organisational development and change management experience. The suitable candidate must have a deep understanding of Catholic Education and a personal commitment to the Catholic faith.

If you are a leader looking to make a meaningful contribution to Irish education, contact Dennis O'Connor in strictest confidence at dennis@2into3.com or call +353-1-640-1825.

Closing date for applications is 18th March.

For more information on the work of the CPSMA, please see www.cpsma.ie

www.2into3.com

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SENIOR ENVIRONMENT & PLANNING LAWYER

Our client, one of Ireland's premier corporate law firms, seeks to recruit a talented leader to its environment and planning law group in Dublin. With offices in Ireland, the UK and the US, this progressive top tier firm has crafted a brand synonymous with business oriented legal advice.

A newly created position, as the Senior Environment & Planning Lawyer you will collaborate with partners across the construction, energy and commercial real estate teams and will be responsible for shaping the growth of the environment and planning law group. The practice currently acts on contentious as well as non-contentious matters for major public and private sector organisations across the energy, construction, utility, infrastructure, real estate development, pharmaceutical, private equity and financial services industries in Ireland.

Suitable candidates will be technically expert in environment and planning law and will ideally be operating at senior level in Dublin, Cork or in the UK. In addition, the successful candidate will be ambitious, commercially minded and will have excellent interpersonal and leadership qualities. The appointee will have a clear track to partnership within an agreed timeframe.

For an exploratory conversation, please submit your CV to our advising consultant at HRM, via bryan.durkan@hrmrecruit.com or contact by phone on + 353 1 632 1852. All discussions and applications are strictly confidential.

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Talk to the Irish Legal Recruitment Specialists

We have significant new opportunities for practitioners across many practice areas from Recently Qualified to Partner level. The following are examples of the roles our clients are seeking to fill. Please make sure to visit our website for other positions.

Asset Finance – Assistant to Senior Associate

A first rate solicitor is being sought for the large and successful Asset Finance Group of this Big 6 firm. The Group has unrivalled expertise specialising in aircraft and big ticket leasing matters. You will be working in asset finance or in general banking or commercial law and interested in developing an expertise in this area.

Banking/Regulatory Solicitor – Newly Qualified to Assistant

A pre-eminent Dublin based corporate law firm is seeking to recruit a solicitor to join its Banking and Financial Services Group to work on financing transactions and advise on regulatory issues for both domestic and international clients. The successful candidate will have experience in consumer regulation, regulatory authorisation applications, loan portfolio sales and debt capital markets.

Construction – Experienced Professional Support Lawyer

Our client is seeking to recruit a Professional Support Lawyer to join its Construction Group initially for a fixed term of 2/3 years although part-time work will be considered. The successful candidate will work with the partners and solicitors and other professional support lawyers within the firm. You will be a qualified solicitor/barrister with transactional experience focusing on construction/infrastructure projects.

Construction Lawyer – Recently Qualified to Assistant

A leading Dublin law firm is seeking to recruit a lawyer to join a first rate Construction group. You will have an excellent academic record having trained with a well-respected practice. A genuine interest in and commitment to a career in this practice area is essential. You will be dealing with non-contentious matters exclusively to include contract drafting and advisory work.

Commercial Property – Assistant to Associate

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.

Corporate/Commercial Lawyer – Recently Qualified to Associate

This Dublin firm is seeking a solicitor to join its Corporate/Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or possibly in-house. You will have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate

Advising financial institutions, government bodies and regulators as well as domestic and international companies on behalf of a top Irish firm, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/unsecured loans.

Debt Collection – Experienced Professional Support Lawyer

Our Client, a highly successful Dublin law firm, is looking to recruit a Professional Support Lawyer to join its long established debt collection team. You will be a qualified Solicitor or Barrister with experience of all requisite procedures from taking initial instructions to securing judgements.

Energy – Associate to Senior Associate

This top-flight Dublin law firm seeks to recruit a solicitor to join its expanding Energy Department. You will be advising on significant energy projects in the Irish market and in legal regulatory issues relevant to the energy sector. Previous exposure to projects work will be an advantage.

Projects – Associate to Senior Associate

A leading Irish firm seeks to recruit a solicitor to join its expanding Projects Team. The work in the group is challenging, multi-disciplinary and varied. You will provide legal services to project sponsors, contractors, funders and other financial institutions.

Taxation Solicitor – Assistant to Associate

Our client, one of the fastest growing law firms in Ireland has an immediate need for a Taxation Solicitor to meet client demand and a rapidly expanding client base. You will be AITI qualified with experience of dealing with tax matters for domestic and international corporate clients.

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. T +353 (0) 1 670 3997 E mbenson@benasso.com www.benasso.com