



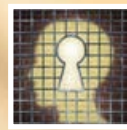
**Full metal jacket**

Just what amounts to a 'reasonable instruction' in terms of employment law?



**Bring me sunshine**

Research indicates that many lawyers regret their career choice. So, what to do?



**Walking in Memphis**

The role of training for police in helping people with mental illness

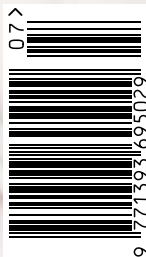
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LAW SOCIETY

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**IMA**  
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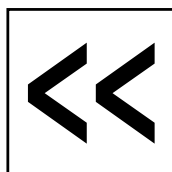
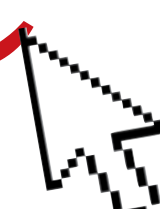
**Meet the first female solicitor  
at the Cabinet table**



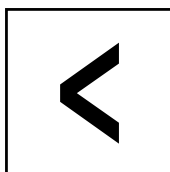
navigating your interactive

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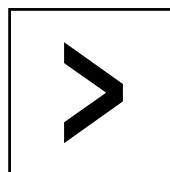
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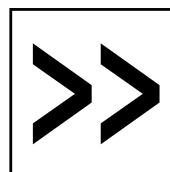
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# Does your client have a claim eligible for ASR Hip ADR?

**The ADR Process gives claimants a neutral non-binding evaluation of eligible claims**

---

## How it works

To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from [www.hipadr.ie](http://www.hipadr.ie). On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

---

## Eligible claims

**Claimants may avail of the ADR Process if:**

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

**For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email [hipadr@mccannfitzgerald.com](mailto:hipadr@mccannfitzgerald.com)**



# SCHOOL'S OUT FOR SUMMER

**A**s I prepare my 'President's Message' for this *Gazette*, Ireland is basking in a real heatwave – a very welcome treat. I have started my travels to bar associations around the country in the past few weeks, and plan to get to see as many of you as possible in the coming months. In the last seven days, as I write, the director general and I have visited the bar associations of Wexford, Limerick, Kerry and West Cork. These meetings are a very important part of the president's year, and provide a sociable way to meet with and listen to colleagues.

It is also an informal way for the Society to communicate with its members, to be informed of live issues, to take on board colleagues' concerns, and act on them where possible. I appreciate the efforts made by busy colleagues to meet with me and the director general, and the courtesy and hospitality that has been shown to us.

## Here to help

The Law Society does wonderful work for the benefit of the profession. I would encourage you to contact the Society to benefit from all the support services it offers in areas such as practice regulation, data protection matters, career support, and guidance and ethics.

The guidance and ethics helpline is 01 672 4800 (ask for the committee secretary). Solicitors who are concerned at any time about their own position on any matter of conduct can also make contact with the Guidance and Ethics Committee. These services are available to all solicitor firms, regardless of size.

The Society also provides personal support to colleagues, including its practice advisory

service (search for 'running a practice' at [www.lawsociety.ie](http://www.lawsociety.ie), which deals with all the aspects of running a firm), and the well-being section, where you'll find information on specialist professional support organisations like LawCare, Consult a Colleague, and the Solicitors Benevolent Association.

## Anniversaries

This year marks the 40<sup>th</sup> anniversary of the Law Society's move to Blackhall Place (see p24 of this *Gazette*) and the tenth anniversary of the Law Society's relationship with Finuas Skillnet. Established to address the lifelong learning requirements of the legal profession, Law Society Finuas Skillnet has provided a means for solicitors to reskill, upskill, and diversify into completely new areas of law.



TAKE TIME FOR YOURSELVES,  
YOUR FAMILIES AND FRIENDS.  
TAKE CARE OF YOURSELVES

One of the great successes to emerge from this relationship has been the regional cluster events. These address the day-to-day requirements of solicitors, whether employed in law firms or in-house. Since the beginning of this year, I have attended events in Donegal, Portlaoise and Ennis – all of them outstanding successes.

As the summer comes into full swing, may I take this opportunity to remind you to take time for yourselves, your families and friends. Take care of yourselves. Recharge your batteries and enjoy the summer festivities!

MICHAEL QUINLAN,  
PRESIDENT



# gazette

LAW SOCIETY

COVER PIC: CIAN REDMOND



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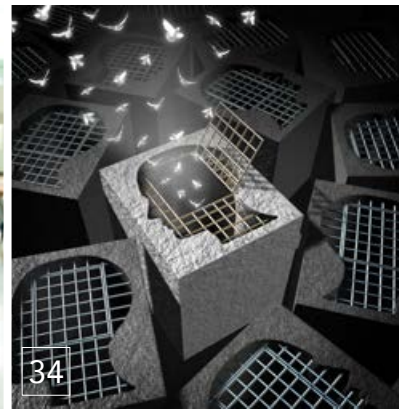
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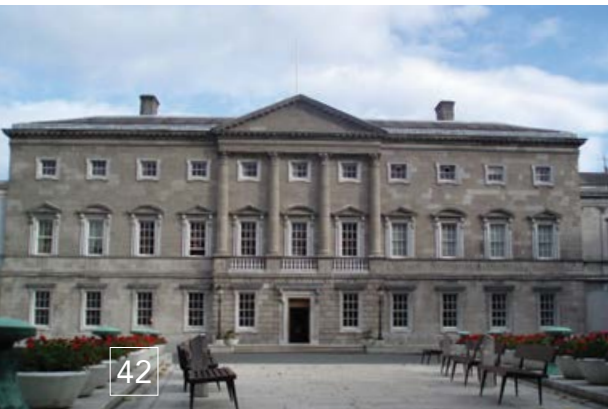
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# THE BIG PICTURE





**GOLDEN BROWN**  
A Myanmar police officer walks past a pile of burning illegal drugs during a 'destruction ceremony' of seized narcotics. The event was held to mark International Day against Drug Abuse, in Yangon, Myanmar, on 26 June 2018. Myanmar authorities destroyed drugs worth some US\$184.98 million in Yangon, Mandalay, and Taunggyi

PICTURE: EPA/ETHAN YEN CHAN NAINING





# CALCUTTA RUN 2018





PICS: DAVID MURPHY





## STREET LAW CLASS OF 2017/18



At the Diploma Centre's recent conferral ceremony for the Street Law Programme (2017/18) were (front, l to r) Megan Fennell, Siobhan Phayer, Mary Henderson (McGrath McGrane Solicitors), Gillian Brennan (Nathaniel Lacy & Partners), Ms Justice Eileen Creedon, Dr Freda Grealy (head, Diploma Centre), John Lunney (Diploma Centre), Sinead Finnerty, Alison Devine, Nicola Hackett and Kirsty Farrell; (middle, l to r) Killian McCarthy, Ciara Redmond, Michael Wilkins, Emma Finn, Megan Gilroy, Anna Kenna, Amy Maguire Martin, Claire Finnegan, Laura Hegarty, Marian Walsh, Sinead Lardner, Aoife Coughlan, Kellie Daniels, Sinead Gleeson and Sorcha Nolan; (back, l to r) Bernardo Langaro, Sean Mooney, Evan Doyle, Cian O'Gorman, Ruairi O'Donnell, Robert McCarthy, Colm Kelly, Harvey Alvarez-O'Neil, Thomas Burke, Kevin Flood, Keith Kierans and Rebecca Raftery (both Diploma Centre)

### PRIZE-WINNING LESSONS IN ARREST AND DETENTION



Ms Justice Eileen Creedon makes a presentation to prize-winning trainee solicitors Kellie Daniels and Annah Kenna for their lesson plan on arrest and detention, during the conferral ceremony for the Street Law Programme 2017/18

### THE POWER OF PERCEPTION



Ms Justice Eileen Creedon makes a presentation to trainee solicitors Amy Maguire Martin and Laura Hegarty, who were prizewinners for their lesson plan on 'The power of perception', at the recent conferring ceremony for the Street Law Programme 2017/18



## A WICKLOW WELCOME FOR SOCIETY GUESTS



PIC: SARAH MCGMANUS

Catriona Murray, president of the Wicklow Solicitors' Bar Association (WSBA), welcomed Law Society President Michael Quinlan and director general Ken Murphy to a meeting with members at The Glenview Hotel, Wicklow, recently. A number of topical issues inspired some lively discussion among the group, which included (*front, l to r*): Bernard O'Beirne, Jonathan White, Ken Murphy (director general), Catriona Murray (president, WSBA), Michael Quinlan (president, Law Society), Naomi Gardiner (committee member), Barbara Lydon (committee member), Damien Conroy (honorary secretary) and Finola Freehill (treasurer); (*middle, l to r*): Brian Robinson, Stefan O'Connor, Michael Moran (committee member), Ray Fitzpatrick, Patrick Jones, Andrew Tarrant, Michael O'Neill (committee member), Marie Hynes, Jennifer Haughton and Richard Joyce; (*back, l to r*): Maria Byrne, David Tarrant, Tom Honan, Aine Hogan, Bernadette Goff, David Lavelle, Maureen Bullock, Deirdre Fox, Dermot Hickey, Fiona Grogan, Amber Croughwell, Karl Carney, Denis Hipwell, Ian Bracken and Donal O'Sullivan

## BUILDING BRIDGES AT MIDLANDS AGM



PIC: PAULA NOLAN

Attending the recent AGM of the Midlands Bar Association (MBA) at The Bridge House Hotel, Tullamore, were (*front, l to r*): Sinead Nea, Aisling Penrose, Michael Byrne, Joseph Brophy, Brian Mahon, Ken Murphy (director general), Anne Marie Kelleher (president, MSBA), Michael Quinlan (president, Law Society), Denise Biggins (secretary, MSBA), Kelly McNamara, Marc Bairéad (treasurer, MSBA), John Wallace, Kathy Garvey and Shane Johnston; (*middle, l to r*): Ruth Foy, Claire Hickey, Julisa Flanagan, Marie Gormley, Joanne Bane, Carmel Kinsella-Leavy, Bernadette McArdle, Rita Tynan, Verona Smyth, Mary Ward, Paddy Caulfield, Niall Moran, Matt Johnston, Marcus Farrell, Martin Reidy, Marian Deely, Dermot Murphy, Ann Woods, Patrick Martin, Oliver O'Sullivan, Mary Grennan, Emeria Flood, Johanna McGowan, Jade Farrelly, Emma Egan, Mary Clear, Audrey Goode, Jane Farrell, Caren Farrell, Tom Farrell, John O'Carroll and Paul Kelly; (*back, l to r*): Raymond Mahon, Karen Costello, Brian O'Brien, Patrick Fox, John Reedy, Owen Carty, Matt Shaw, Dermot Scanlon, Brian O'Meara, Donal Farrelly, Daragh Ryan, Kenneth Enright, John Shaw, Tom O'Donovan, Dermot Mahon, Patrick Carty and Tom Woods



## SPY BOSS TO HEAD GSOC

Garda complaints body GSOC will be led by a former director of US Homeland Security, Justice Minister Charlie Flanagan has announced.

Patrick Sullivan has been appointed to the Garda Síochána Ombudsman Commission following an independent international competition. He steps into the shoes of Mark Toland, recently appointed chief inspector with the Garda Inspectorate.

With over 40 years' experience



in federal law enforcement in the US, the minister said that Sullivan would bring a "different perspective" to the policing oversight work of GSOC. His term will run until December 2020.

Sullivan's most recent position was in the investigations unit of the US Environmental Protection Agency. As a secret agent, Sullivan worked in counterfeit, presidential protection, anti-smuggling and organised crime divisions.

## SMITE THEM!

**Announcing an autumn referendum on blasphemy, Justice Minister Charlie Flanagan says that removing the offence from the Constitution is an important step in terms of Ireland's international reputation.**

"Regrettably, there are some countries in the world where blasphemy is an offence where the punishment is being put to death. In these countries, such laws are not an anachronism, but a very real threat to the lives of those who do not share the views of those enforcing the laws," the minister said. "Such situations are abhorrent to our beliefs and values. By removing this provision from our Constitution, we can send a strong message to the world that laws against blasphemy do not reflect Irish values and that we do not believe such laws should exist."

It is expected that the vote will coincide with the autumn presidential election. The minister will shortly initiate a constitutional amendment bill to be considered by the Oireachtas.

## EUROPEAN AWARDS FOR MCCANN FITZGERALD

McCann FitzGerald partner Catherine Deane received the 'Best in Aviation' award for the second year running at the 2018 Europe Women in Business Law Awards. Deirdre Barnicle, head of the firm's tax compliance services group, got the 'Rising Star: Tax' award.

Deane is a specialist in aircraft transactions and acts for leading aircraft lessors, lenders and arrangers on all aspects of aircraft financing and leasing. Barnicle advises across all areas of tax, including the taxation of financial services transactions,



Catherine Deane

capital markets, financial products, banking, reorganisations, restructurings, migrations, real



Deirdre Barnicle

estate transactions and other international and domestic tax matters.

## MINISTER CLAMPS DOWN ON 'DIETICIANS'

Health Minister Simon Harris has introduced a regulation aimed at protecting members of the public who use dietitians and speech-and-language therapists.

Only qualified registered professionals have had permission to use these descriptors since the [Health and Social Care Professions Act](#) was enacted in 2005.



The new regulation, which came into effect on 25 June 2018, irons out a wrinkle whereby the title of 'dietician' (spelt with the letter 'c', a variant title of 'dietitian') and the title of 'speech therapist' (a variant title of speech-and-language therapist) can also only be used by qualified professionals.

## FINUAS SKILLNET

Law Society Finuas Skillnet is the new name of Law Society Skillnet and Law Society Finuas Network. The two networks have now merged.

For details on Law Society Finuas Skillnet membership and a list of benefits, including all upcoming events, email [finuasskillnet@lawsociety.ie](mailto:finuasskillnet@lawsociety.ie).



# COUNCIL APPROVES MAJOR REVIEW OF EDUCATION AND TRAINING

The Law Society Council's most important debate for a great many years on the subject of solicitor education and training was held on 8 June 2018. Following a lengthy discussion, the Council approved the Society's 160-page submission to the Legal Services Regulatory Authority.

The authority was seeking submissions as part of a public consultation prior to a report to the Minister for Justice on the education and training arrangements in the State for legal practitioners. In accordance with section 34 of the *Legal Services Regulation Act 2015*, this report must be delivered by the authority to the minister by 1 October 2018.

The Society had been working, directly or indirectly, on this review for over a year. It began with a commissioning of independent international experts on legal education and training, led by Toronto-based Prof Paul Maharg, which produced a comprehensive report to the Society in January 2018. Following this, a ten-person review group, chaired by Mr Justice Michael Peart (Court of Appeal), produced a draft report for adoption by the Council. Thirty specific changes and improvements to the current system were proposed and adopted.

What follows is a very brief summary of the presentation made to the Council on 8 June 2018 by the vice-chair of the review group, solicitor Carol Plunkett.

The group met on eight occasions, including a weekend meeting. It considered the detailed and comprehensive review of solicitor education undertaken by Prof Jane Chang, Jenny Crewe and Prof Maharg. In addition, the group engaged in a broad-ranging examination on all aspects of



PICTURE: CIAN REDMOND

professional legal education.

Following detailed examination, the Society's Future of Solicitor Education Review Group developed 30 proposals for change, including the establishment within the Law School of a Centre for Teaching, Development and Innovation.

On the professional practice courses (PPC), the Maharg review group found "the structures of teaching are well organised and designed, and current teaching is aligned to assessment practices".

## Ahead of the field

Innovation is important to the Law School. The Maharg review group said that the use of some digital technologies in the professional education of solicitors was ahead of the field in legal services education, and that continuing professional development (CPD) in the form of diplomas and MOOCs leads the field.

Building on this, the Law School is committed to expanding its focus on innovation – beyond technology and into all aspects of legal education and practice. It is leading the way regarding technological advances in legal training and education.



SUBMISSION TO THE LEGAL SERVICES REGULATORY AUTHORITY AS PART OF A PUBLIC CONSULTATION PRIOR TO A REPORT TO THE MINISTER FOR JUSTICE AND EQUALITY ON THE EDUCATION AND TRAINING ARRANGEMENTS IN THE STATE FOR LEGAL PRACTITIONERS

June 2018



## Entrance examination

The FE1 will remain in place as the entrance assessment for those wishing to train as solicitors. This is to ensure a common knowledge of core academic legal subjects among applicants drawn from the 19 law degree providers in Ireland, from non-law graduates, and others. The alternative to the FE1 is a system of standard setting and assessment of undergraduate law provision, which would be expensive and controversial.

Accelerated access to taking the FE1 will be facilitated on the completion of the second year of an Irish law degree programme.

## Training contracts

A variety of models of training contracts will be developed to improve the diversity of the training contracts provided.

## Professional practice courses

The current 'sandwich' model of the PPC will end. All current compulsory content from PPC1 and 2 will be covered in the initial compulsory element of the PPC. In addition to current course subjects, this course will comprise 21<sup>st</sup> century skills, such as leadership, project management, and ADR.

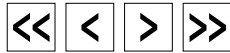
The PPC will also consist of four specialist legal or practice-related modules. Trainees will be free to complete these courses with other educators or professional bodies, as well as the Law Society.

## Physical resources

At a minimum, it is estimated that ten to 15 new tutorial rooms are required in the short-term. An assessment of future needs should be undertaken to identify what additional space is necessary to future-proof facilities.

We need to remind ourselves that the main objective of professional legal education is to equip trainee solicitors to know and understand the principles of law underlying the core areas of practice and to be able to apply their knowledge in a practical way – adapting to ongoing legal changes and developments in business and technology.

The solicitors' profession in Ireland is proud of its diversity. Since 2015, women practitioners have outnumbered men. The profession has been attractive to mature entrants. Over the last ten years, between 10% and 15% of each new PPC has consisted of trainees over the age of 30.



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# CALCUTTA RUN FLIES THE FLAG IN FOUR CITIES

The Calcutta Run celebrated its 20<sup>th</sup> anniversary in style this year by hosting two separate events in Dublin and Cork – while, for the first time, raising the standard in Kolkata (formerly Calcutta, India) and the Big Apple in the USA. All told, over 1,400 people took part in the four-city Calcutta Run and Cycle.

On 26 May, 1,500 participants hit Dublin's streets, opting for either the 5k or 10k route – both via the Phoenix Park. Cycling events in Dublin and Cork also proved very popular. A day later, 190 Munster-based practitioners, family members and friends traversed a 5k route in the Blackrock area of Cork city.

First held in 1999, the run has been raising funds every year since to combat homelessness in Ireland and Kolkata. It has raised an astonishing €3.7 million during those first 19 years. This year, the goal was to push that limit to the highly ambitious target of €4 million.

The annual fundraiser is supported by the Law Society of Ireland and brings together legal professionals, family members and friends, with all proceeds going to the Peter McVerry Trust and The Hope Foundation. Both organisations work



Calcutta Run organiser Cillian McDomhnaill with representatives of sponsors, Bank of Ireland

tirelessly to reduce homelessness in Ireland and India. Half of the proceeds from the Cork run will go to SHARE (a local charity helping the elderly homeless).

The organisers wish to extend their thanks to everyone who participated and to the many volunteers, sponsors, and donors who made the event possible. Thanks to the generosity of donors, the hope is still alive that the €4 million target will be achieved. Donations are still being accepted at [www.calcuttarun.com](http://www.calcuttarun.com).



PICS: DAVID MURPHY





## KICK-START YOUR CAREER

The Law Society's 'Returner Programme', which has been running for three years now, is scheduled to start again in September, *writes Keith O'Malley (head of support services)*. The initiative helps solicitors to relaunch their careers after a career break – typically for family-care reasons.

Programme participants are guided through matters such as regulatory responsibilities, how to address skills deficits, and the kinds of career opportunities that are likely to suit them. Training in job-seeking skills is also provided.

Participants are encouraged to:

- Consider what personal success looks like – placing their priorities at the core,
- Confidently make decisions that support their personal vision of success,
- Connect with people who face similar choices, and share tips and strategies.

Workshops are held once a week, for four consecutive weeks, which address:

- Professional requirements when returning to work,
- Learning from the experience of solicitors who have successfully returned to work,
- Self-appraisal in order to identify suitable jobs and work environments,
- Developing an appropriate CV and job-application correspondence,
- A crash course in social media and networking,
- Preparations for making contact with employers and attending interviews.

Workshops are held at Blackhall Place, while a distance programme is available for solicitors who cannot easily travel to the capital.

Lorraine, a participant in the programme, says: "This is a gem

of a programme and I am deeply grateful to the Law Society for providing it. The Returner Programme has made a huge difference to me in terms of building my confidence and honing my approach to job-seeking."

Another participant, Fiona, adds: "I've enjoyed the workshops immensely and really appreciated the opportunity to participate in them. I found both the materials and the weekly focus excellent."

Focusing on the CV-building aspect, Judy says: "Whatever support you require is available through this programme. You can get help with your CV, with finding suitable job opportunities, and with preparing for interviews."

For those returning to work after a period of time, Jacinta concludes: "This programme provides people with the confidence and skills to relaunch their career after a gap of what, for some, may be several years. I found the course content and materials really useful."



PICTURE: SHUTTERSTOCK

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## THE VIEW FROM THE SUMMIT



PIC: LENS MEN

At the meeting of the four home law societies at Blackhall Place, Dublin, on 19 June 2018, were (front, l to r) presidents Joe Egan (Law Society of England and Wales), Eileen Ewing (Law Society of Northern Ireland), Michael Quinlan (Law Society of Ireland) and Alison Atack (Law Society of Scotland); (back, l to r) CEOs and vice-presidents Lorna Jack (CEO, Scotland), Paul Tennant (CEO, England and Wales), Alan Hunter (CEO, Northern Ireland), Suzanne Rice (vice-president, Northern Ireland), Mary Keane (deputy director general, Ireland), Ken Murphy (director general, Ireland), Patrick Dorgan (senior vice-president, Ireland) and Joe Mulholland (vice-president, Scotland)

**On 19 June 2018, the leaders of the law societies of Ireland, Northern Ireland, Scotland, and England and Wales met in the Council Chamber in Blackhall Place for one of the 'summits' they hold every six months.**

The leaders of the more than 200,000 solicitors on the Roll collectively in the four jurisdictions – inevitably – had an agenda topped by the consequences of Brexit for solicitors and for legal practice.

In addition, the four law society

leadership groups updated each other and discussed a range of other 'big picture' issues, relating to changes in each other's jurisdictions on the education and admission of solicitors, legal aid, anti-money-laundering, reg-

ulatory reform, business models for solicitors' firms, personal injuries litigation, and professional indemnity insurance, among a range of other issues in what is always an invaluable get-together.

## PLATINUM BLONDE FOR ROUND IRELAND RACE

Paul Egan (Law Society Council member and partner at Mason Hayes & Curran) has an interesting challenge lined up this summer. He'll be skippering his boat *Platinum Blonde* in the Volvo Round Ireland Race (RIR), beginning at Wicklow harbour.

As we go to press, Paul and his crew will be up against 53 other entries from the United States, Finland, Norway, France, Britain and Ireland.

He first entered the RIR in 2006, setting off in a 31-footer –



the smallest entry in the race that year. He completed the course in six days, 18 hours.

His 35-footer *Platinum Blonde* has enjoyed good results in a variety of Irish Sea events. Says

Paul: "Sailing around Ireland is the consummate 'must-do' race for every Irish sailor. It's the most perfect offshore race in Europe – and possibly the world."

His first boat *Legally Blonde* (called after the Reece Witherspoon movie) was named by his eldest daughter. *Legally Brunette* followed, which was chosen by his boat partner Cathal Drohan. "*Platinum Blonde* was the natural progression," jokes Paul.

We wish him and his crew fair weather.



## MEMBER SERVICES

### BLACKHALL B&B GETS UPGRADE



PICS: CIAN REDMOND

The next time you're in Dublin, why not stay at the Law Society's B&B?

Exclusive to Law Society members, the B&B offers a competitive alternative to expensive city-centre hotels for your business or pleasure trips to the capital.

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

All rooms are en suite, with flat-screen TV, Wi-Fi and tea/coffee making facilities. Newly refurbished, the rooms have been redesigned

to maximise space, with a fresh look.

Guests can avail of free parking on-site, with the reassuring presence of 24-hour security. The cost of a single room is €45, and it's €65 for a double/twin room, with breakfast included (continental at weekends).

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

You can read more about the Society's B&B facilities at [www.lawsociety.ie/bandb](http://www.lawsociety.ie/bandb).

To check availability or to book a room, contact Law Society reception at [general@lawsociety.ie](mailto:general@lawsociety.ie) or tel: 01 672 4800.



## LEMAN CEMENTS 15% ANNUAL GROWTH



New hires: Bláthnaid Evans, Shayne Foley and Elaine White

**Leman Solicitors has announced the appointment of three new hires. Bláthnaid Evans joins as head of employment, Shayne Foley as a senior consultant on the real estate team, and Elaine White as a consultant for the dispute resolution team, all with**

**effect from 4 June 2018.**

**Leman is seeking applicants for seven other positions across the corporate, real estate and litigation teams, and business support roles. The firm is growing at a rate of 15%, year on year.**

## LONGEST SERVING SUPREME COURT JUDGE

It appears that the *Gazette* made a rare mistake in our report on the retirement of Mrs Justice Susan Denham (see the August/September 2017 issue, p26). Quoting from a tribute paid to the former Chief Justice, we reported that she was "the longest-serving member of the Supreme Court".

We are happy to clarify that Mr Justice Brian Walsh was, in fact, the longest-serving member of the Supreme Court, with a record of 29 years. Walsh was

appointed a judge of the High Court at the age of 39 (1959-61). He became a judge of the Supreme Court in 1961, serving until 1990.

According to Ruidhán Mac Cormaic's book, *The Supreme Court*, the second-longest-serving judge of the Supreme Court was Mr Justice James Fennelly, who served from 1925 to 1953 (28 years). Denham is, therefore, the third-longest serving judge of the Supreme Court with 25 years of service.



## SPEAKING YOUR LANGUAGE



The Law Society has produced a new series of multilingual client information leaflets, *writes Judith Tedders (member services executive)*.

The leaflets have been designed to inform clients and members of the public about information on common legal issues. They have been awarded the 'Plain English' seal of approval by the National Adult Literacy Agency.

And, in recognition of the more diverse language requirements in Ireland today, the leaflets have been translated into Irish and the most commonly spoken languages here – Polish, French, Romanian and Lithuanian.

The series provides information on buying and selling a home, making a will, divorce, employment

rights, starting a business, and anti-money-laundering requirements. The leaflets reinforce the central message of the Law Society's ongoing radio advertising campaign, which encourages clients to 'talk to your solicitor'.

Available exclusively to practising members of the Law Society, they can be printed in colour or black and white, and should prove popular with clients visiting their solicitors' offices.

Practitioners can also personalise the leaflets with their firm's stamp, making them ideal material for marketing purposes for both existing and potential clients.

To download the leaflets, visit [www.lawsociety.ie/clientcare](http://www.lawsociety.ie/clientcare) or contact [j.tedders@lawsociety.ie](mailto:j.tedders@lawsociety.ie).

## ON THE FENCE

**Michalis Kirimlidis (IT support in the Society's Education Centre) represented Ireland at the European Fencing Championships in Novi Sad, Serbia, from 16 to 21 June 2018. He will fly the Irish flag at the World Fencing Championships from 19-27 July in Wuxi, China. We wish him well.**



## MARKETING YOUR FIRM THE ONE AND ONLY

Last month, we looked at the importance of putting your personality into your newsletter. But the importance of this idea goes much further than just your newsletter.

We do business with people we know, like, and trust. The fact that you hear this repeated endlessly does not in any way take away from this simple fundamental truth, and the importance of it.

It is our identity, who we are – and the relationships that we forge with our clients based around that identity – this enables us to create a unique bond with our clients and prospects. The one thing that they cannot get anywhere else in the marketplace is you. You are unique. The relationship of trust that you develop with your clients based on who you are is unique and cannot be replicated.

This is the most certain way out of the commodity trap.

Of course, you still need to provide the what and the how. You must deliver excellence in these areas, but by building a relationship with them around a very clear identity, your 'unique who', you move from an offering in a crowded marketplace of infinite choice to being 'the one and only'. It's the most powerful positioning you can have.

In order to create an authentic 'who', we need to really put ourselves into it. This is probably the sim-



plest, most counterintuitive, and most powerful marketing message I can give you: the extent to which you put your own personality into your marketing will determine its effectiveness.

We are conditioned *not* to do this.

We are conditioned to show a perfect professional persona. But we all know that this is false – it has to be. Sure, you are a professional, and I'm not advocating compromising your professional standards. But, as professionals, we all know that we and the other professionals we deal with are just people behind it all – struggling with the same challenges we all face, to a greater or lesser degree.

Deep down, your prospects and clients know this too.

The more you reveal your true identity to them and put your personality into your marketing, the more powerful it will be.

*Flor McCarthy is the author of The Solicitor's Guide to Marketing and Growing a Business, available at [www.thesolicitors-guide.com](http://www.thesolicitors-guide.com).*



## WARM WELCOME FOR UKRAINIAN JUDGES

The Law Society recently hosted senior members of the Ukrainian judiciary at Blackhall Place. Led by President Michael Quinlan and TP Kennedy (director of education), Law Society representatives discussed with their visitors the training of solicitors in Ireland and the regulation of the profession.

The delegation of five senior Ukrainian judges was led by Mykola Onishchuk (rector of the National School of Judges). The visit was arranged by the Law Society's EU and International Affairs Committee, in conjunction with the EU's Advisory Mission to Ukraine.



## KING HENRY SHARES SPOILS WITH MATHESON



Kilkenny hurling legend Henry Shefflin is widely regarded as the greatest hurler of all time, having bagged ten All-Ireland medals, 13 Leinster medals, six National

Hurling League medals, and 11 All-Star awards. The sportsman addressed Matheson's corporate team at Croke Park, sharing his experiences and insights gained

during a remarkable sporting career. Shefflin emphasised the importance of leadership and high performance, describing leadership as a "decision and not

a position". The Ballyhale Shamrocks man shared nuggets on how to create a winning mentality, the art of delegation, and the role of the team.



COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

KERRY

## KERRY WELCOME FOR DUB DUO



PICTURE: JOE HANLEY

Kerry Law Society warmly welcomed the Law Society president and director general to a packed seminar at the Rose Hotel, Tralee, on 25 June 2018: John Galvin (chairman, Kerry Law Society), Michael Quinlan (president, Law Society of Ireland), Patrick Mann (president, Kerry Law Society) and Ken Murphy (director general, Law Society)

DUBLIN

## FAMILY LAWYERS CELEBRATE JUDICIAL APPOINTMENTS



Prominent family lawyers gathered at the Four Courts to honour the appointments of leading family law solicitors Mary Cashin (Galway) and Geraldine Carty (Naas, Co Kildare) to the District Court bench recently. Pictured are Judge Rosemary Horgan (president of the District Court), Judge Mary Cashin, Keith Walsh (chair of the of the Law Society's Child and Family Law Committee), Dervla Browne SC, Judge Geraldine Carty, Nuala Jackson SC, Catherine White BL, and Clare Feddis (chair of the Family Lawyers' Association of Ireland)

WICKLOW

## DUST OFF THE DRIVER FOR DRUIDS GLEN

At its AGM on 18 April, the Wicklow Solicitors' Bar Association elected its new committee: Catriona Murray (president), Damien Conroy (secretary),

Finola Freehill (treasurer), Naomi Gardiner, Barbara Lydon, Michael Moran, and Michael O'Neill.

The association will host its annual golf and dinner outing at

Druids Glen Resort on 20 July 2018. Brian Robinson (Benville Robinson Solicitors) is organising the event. Those wishing to book should contact Brian at 01

276 1330. This event is one of the most successful in the association's annual calendar, so early booking is advisable in order to avoid disappointment.

## MIDLANDS AGM PAYS TRIBUTE

The Midlands Bar Association held its AGM at the Bridge House Hotel, Tullamore, in February. The association welcomed Law Society President Michael Quinlan and director general Ken Murphy.

In her opening address, Anne Marie Kelleher (association president) paid tribute to their colleague and past-president of the Law Society Tom Shaw (father of past-president John D Shaw), who died during the past year. A minute's silence was held in his honour.

She thanked the outgoing committee for their commitment during their term of office and expressed her gratitude to the many CPD speakers who had given of their time throughout the year.

She also congratulated colleague Judge Bernadette Owens, who was appointed to the District Court bench in early 2017.

With the formal business of the AGM over, Michael Quinlan updated those present on the Setanta Insurance issue, the taxation of costs, well-being for solicitors, criminal legal-aid payments, the Law Society's Education Committee, and the *Mediation Act 2017*.

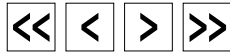


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# THE RULE OF LAW IN A POST-SOVIET WORLD

Ukraine-based Irish solicitor Lynn Sheehan has a unique perspective on the country's battle to end endemic corruption. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



**I**rish people working in the EU have a huge advantage as English speakers but the importance of English may be eroded post-Brexit.

That's according to Irish lawyer Lynn Sheehan, who is currently deployed in Ukraine as Deputy Head of Operations of the EU Advisory Mission (EUAM) to that country, managing a significant number of staff across a range of disciplines, including

police officers and legal professionals.

Sheehan has serious doubts that the English language will continue to have the same central role, post-Brexit, and she notes that some crucial meetings are now being conducted in French.

The Cork city native believes the EU balance of power may shift to Germany and France, and the knock-on consequences

could be serious for Ireland. There's no more room for complacency about our language skills, she believes.

Sheehan herself has completed master's degrees in both Barcelona and Bruges.

She became a mission member at EUAM in 2016 to help deal with the fallout from the 'Revolution of Dignity', when thousands of young people took to the streets to demand an

THE EU ADVISORY MISSION IS TASKED WITH HELPING TURN THINGS AROUND, AS THE COUNTRY PREPARES FOR PARLIAMENTARY AND PRESIDENTIAL ELECTIONS NEXT YEAR

## SLICE OF LIFE

### Professional route to your current position?

After being admitted as a solicitor in 1999, I practised for five years at Ronan Daly Jermyn. During a holiday to Sarajevo in 2003, I met some lawyers working for the Office of the High Representative (then Paddy Ashdown) to Bosnia and Herzegovina (BiH) and had an epiphany! I applied to Mr Ashdown's office for a position and moved to Sarajevo in January 2004. Two years later, he appointed me to sit on the High Judicial and Prosecutorial Council of BiH – a 17-member body that appoints judges and prosecutors. The job catapulted me into the world of judicial reform, international development and conflict resolution. From there, I took up positions in Kosovo, Palestine, Brussels and now Ukraine.

### Career highpoints?

My most significant challenge was working for the International Civilian Office in Kosovo – a temporary body [made up of 300 international staff] with the task of supervising Kosovo after it declared independence in February 2008. I was head of the legal unit.

In Palestine, I worked on joint workshops between the Israelis and Palestinians on the sharing of evidence, supporting the development of the Palestinian ministry of justice, and drafting the law on the creation of a Palestinian civilian police service. Currently, I'm working in a post-Soviet environment, and am also involved in projects on corruption-related issues and the establishment of new law enforcements bodies.

### Best career advice you ever received?

When I was growing up, my mother often used that famous Oscar Wilde quote – be yourself: everyone else is taken. Meaning, in a career context, that you should follow what interests you, even if it is not the most conventional thing to do.

### What have you learnt along the way?

As a manager, I have learned the value of dialogue, discussion, communication and building consensus. We owe it to local colleagues from the host country to ensure that they participate in all decision-making processes, and that their contribution is integrated into the overall approach and vision of the organisation.



PIC: JOHN SHEEHAN

THE EU CAN SEEM OUT OF REACH FOR MOST PEOPLE, AND PERHAPS IT HASN'T EXPLAINED ADEQUATELY ITS MANY SUCCESSES AND BENEFITS – AND THAT HAS LEFT THE WAY OPEN FOR 'FAKE NEWS'

end to corruption (see the April *Gazette*, p46).

### **(Dialectical) materialist girl**

As with many post-Soviet countries, Ukraine is historically corrupt, with bribery embedded into its systems. The EU Advisory Mission is tasked with helping turn things around, as the country prepares for parliamentary and presidential elections next year. It's a massive job in former Soviet-bloc nations.

"Ukrainians are very stoic about it, but on all the corruption indices, Ukraine ranks very highly. The Revolution of Dig-

nity has not been as successful as one would think.

"There are changes (some cosmetic), but there is a lot of disillusionment," says Lynn.

The EU mission is primarily concerned with police reform and the rule of law, partly as a result of police actions during the Revolution of Dignity. Ukraine has a significant police force with 120,000 officers for a population of 48 million. Its civil law system also supports some 8,000 judges, and judicial reform is a part of the mission's agenda. The work is geared to institution-building and devel-


oping mechanisms to deal with internal corruption.

"Ukrainians are superbly well educated and very motivated for change, and receptive to advice," Sheehan says.

### **She sells sanctuary**

That the EU itself is in a state of flux complicates matters. Sheehan believes that against the backdrop of the migration issues and economic uncertainty "the EU can also seem out of reach for most people, and perhaps it hasn't explained adequately its many successes and benefits – and that has left

the way open for 'fake news'."

Reflecting on her various positions in the international community, Sheehan is struck by the enduring and powerful legacy of the Second World War. Ukrainian borders intersect with both Poland and Russia, and geography has played an enormous role in the country's history. Soviet rule has created a wary watchfulness in the Ukrainian people that Lynn initially interpreted as cold, but now sees as sincere and discerning. "If a Ukrainian accepts your friendship, it means they really value and want it," she says. 



# IN GOOD HANDS

The Law Society's decision to purchase Blackhall Place in 1968 was a radical and far-seeing one, at a time when Georgian architectural treasures were undervalued in this country. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



**T**he legendary Dublin Cattle Market was but a short time closed when the Law Society took up residence in Blackhall Place 40 years ago this summer. Drovers guiding their cattle through the streets of Stoneybatter were a familiar sight in the locality before the Aughrim Street market was eventually closed down in the 1970s. But the crowning glory of the district was and remains the Blackhall Place building.

Originally the site of the King's Hospital School, whose charter dates from 1671, the building is acknowledged as one of the finest in Dublin. In 1952, the late

architectural historian Maurice Craig described Blackhall Place as "one of the most beautiful and, in its way, original" of Dublin's major buildings.

### Responsible care

At the ten-year anniversary in 1988, the Irish Architectural Archive praised the "responsible care" of the Law Society's guardianship of the building, which it said "assures its future".

Architect James Howley (of Howley Hayes in Blackrock, Co Dublin) has supervised the restoration and renovation since 2003. He describes Blackhall Place as "a building of the first order and

one of the jewels of Dublin".

The Law Society decision to buy in 1968 was a radical one, says Howley of the Society's move to the premises, since the fashion of the day was for new rather than old buildings. "This project set a healthy precedent for the repair and reuse of old buildings at a time when the value of our Georgian architectural heritage was not widely appreciated in Ireland."

At the time, an ESB plan to knock down 16 Georgian houses on Dublin's Fitzwilliam Street Lower to make way for a new head office was widely opposed by conservationists, but proceeded

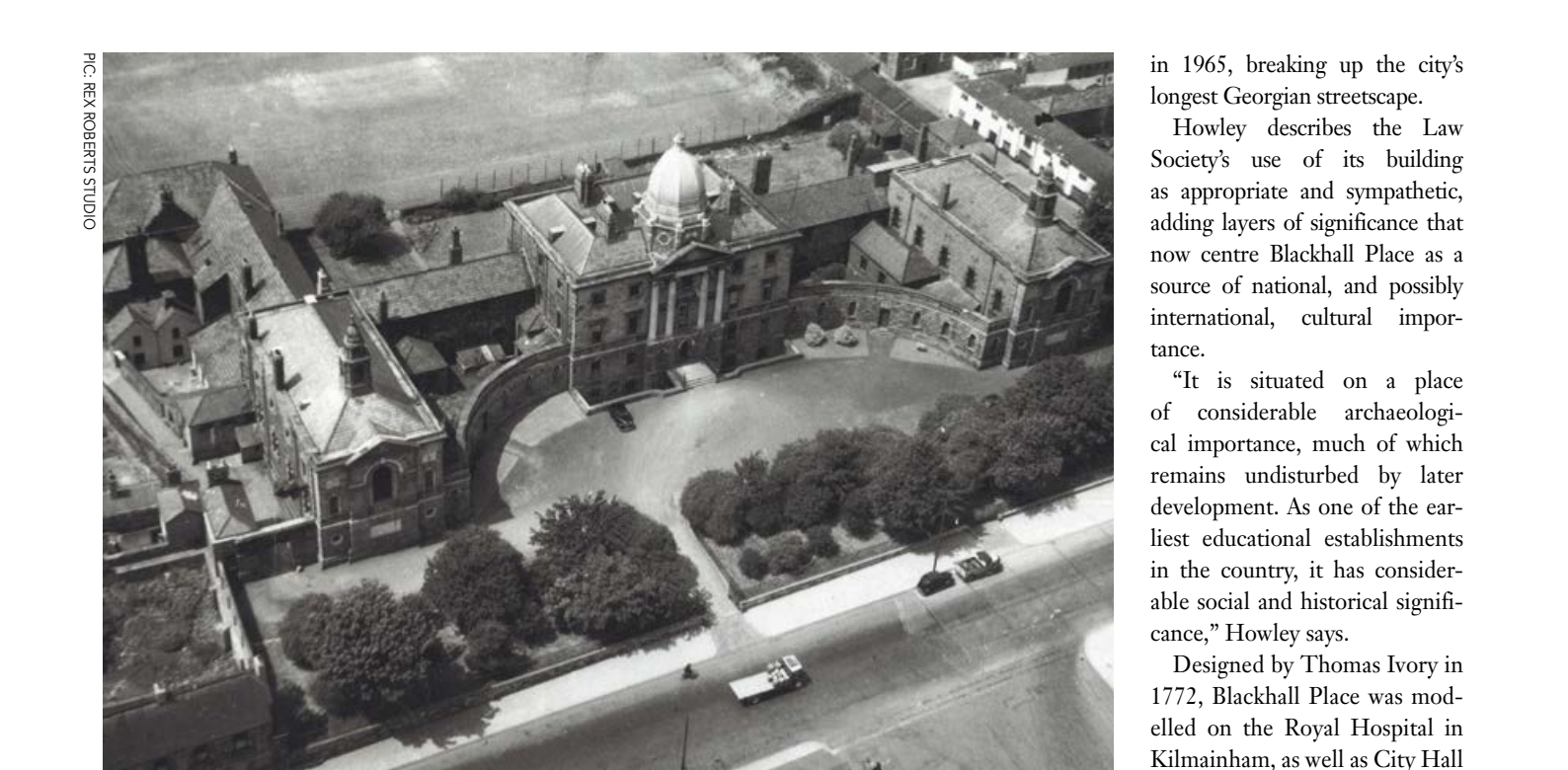
THE MOVE TO BLACKHALL PLACE HAD THE IMPORTANT GOAL OF IMPROVING ENTRY STANDARDS TO THE PROFESSION, WITH A NEW EDUCATION PROGRAMME FOR SOLICITORS' APPRENTICES





PICTURE: CIAN REDMOND

THE LAW SOCIETY DECISION TO BUY IN 1968 WAS A RADICAL ONE, SINCE THE FASHION OF THE DAY WAS FOR NEW RATHER THAN OLD BUILDINGS



PICTURE: REX ROBERTS STUDIO

in 1965, breaking up the city's longest Georgian streetscape.

Howley describes the Law Society's use of its building as appropriate and sympathetic, adding layers of significance that now centre Blackhall Place as a source of national, and possibly international, cultural importance.

"It is situated on a place of considerable archaeological importance, much of which remains undisturbed by later development. As one of the earliest educational establishments in the country, it has considerable social and historical significance," Howley says.

Designed by Thomas Ivory in 1772, Blackhall Place was modelled on the Royal Hospital in Kilmainham, as well as City Hall



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Certificate in Trade Mark Law	8 November 2018	€1,550
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### CONTACT DETAILS

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All lectures are webcast, allowing participants to catch up on course work at a time suitable to their own needs. Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.



PIC: CIAN REDMOND



PIC: LENSEMEN

on Dame Street. Ivory won the commission to design the building in what was viewed as a vote of confidence in the emerging profession of Irish architecture. On completion, it immediately became one of the most celebrated buildings in Dublin.

### Architectural heritage

The Law Society's timely occupation of the building has been lauded for its preservation of a valuable part of Ireland's architectural heritage. The Solicitors' Building at the Four Courts was bursting at the seams from the 1960s onwards, and it was suggested that professional bodies should, as an act of good citizenship, interest themselves in some of Dublin's old buildings then languishing on the market.

A Law Society committee appointed to examine the matter recommended the purchase of the King's Hospital for the sum of £105,000. The contract was completed on 9 July 1968. The existing King's Hospital

school relocated to Palmerstown in west county Dublin in 1970.

But the move into Blackhall Place was not a simple matter. A Society premises committee, established in 1969, estimated that the cost of both purchase and refurbishment of the building eventually would run to £325,000.

The escalating costs caused concern and, by 1971, there were mutterings that the project should be abandoned.

But when former Law Society President Moya Quinlan, together with Council member Peter Prentice, took on the project, matters progressed immediately. The pair pushed for a gradual occupation of the new premises, with redevelopment on a phased basis. A fund-raising programme was initiated to deal with the spiralling costs.

Protracted negotiations on the sale of the existing Solicitors' Buildings in the Four Courts to the Bar eventually concluded in 1977.


Finally, on 14 June 1978, the

Law Society occupied the beautiful historic building that had been entrusted to its care. Blackhall Place would function as an administrative headquarters for the profession, a law school, and a meeting place for all occasions.

The old and beautiful parts of the premises were both preserved and improved, then pressed into modern use.

Then Taoiseach Jack Lynch noted at the opening ceremony that the move to Blackhall Place had the important goal of improving entry standards to the profession, with a new educational programme for solicitors' apprentices.

The whole endeavour, while fraught at times, secured the future of Thomas Ivory's great building for Dublin, while providing a fitting home for the solicitors' profession in Ireland.

As James Howley concludes: "It's hard to think of a more suitable occupant and guardian of this important historic place than the current owners, the Law Society of Ireland." 

Taoiseach Jack Lynch (left) receives the ceremonial key from the architect Terence Nolan (Nolan and Quinlan) at the official opening of the Law Society's new headquarters on 14 June 1978, in the company of then president of the Law Society Joseph L. Dundon

THE SOCIETY'S  
STEWARDSHIP  
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ARCHITECTURAL  
HERITAGE



# BECAUSE WE'RE WORTH IT

Persuading employers of the value of in-house legal advice is an essential part of the job for those working in the in-house and public sector. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE



RISK AWARENESS AND ASSESSMENT IN NEW FIELDS, SUCH AS COMPLIANCE, ANTI-BRIBERY MEASURES, SANCTIONS AND WHISTLE-BLOWING, ARE ALL PART OF THE LAWYER'S ROLE IN PROTECTING A VALUABLE BUSINESS BRAND

In-house solicitors are increasingly needed by senior management to drive their businesses forward, a panel discussion on sectoral change and challenges in the in-house and public sector heard at the Law Society on 24 May. The event was organised by the Society's In-house and Public Sector Committee, in partnership with Law Society Skillnet.

The challenges that arise could include fundamental changes to operations, such as through a takeover, new lines of business, increased growth or decline, or (even more subtly for individuals) by way of direct changes in management or reporting lines, said committee chair Mark Cockerill.

Barrister Mellissa English is the parliamentary legal advisor (PLA) to the Houses of the Oireachtas. She provides legal advice to Oireachtas committees and members. English described how, as the sole lawyer when she started in Leinster House 11 years ago, the volume of incoming legal queries seemed, at times, impossible and unworkable.

With the passage of time, and considering the changing nature of the advice required, she quickly realised that there was sufficient work for a unit of specialist advisers. She convinced the Oireachtas of the necessity of employing a team of lawyers – set against the backdrop of a moratorium

on public sector recruitment.

She says that it's key to get across the message that lawyers are there to help. Legal advice is there for decision-makers to be assured about the legal soundness of their decisions. Lawyers must show that their legal advice is 'worth it'. The PLA and her team have successfully defended a number of high-profile legal challenges, proving her point.

A healthy degree of competition is good within a legal team, English believes. She warns against over-specialisation in important skill areas, which can cause a crisis if one team member leaves – skills need constant updating across the entire team.



Deirdre McDermott, James O'Rourke, Eamonn Kennedy, Mark Cockerill, Alison Bradshaw, Melissa English, Rachael Hession and Louise Campbell



In terms of encouraging teams to accept significant change, she cited the example of her own unit, which has had to take on the role of advising on, and drafting, private members' bills, which previously would have been totally outside of their comfort zone.

English outlined how the need for these new services to members had arisen out of the make-up of the current Dáil. The parliamentary system, including the provision of legal services, was not designed to service the new 'political reality', and change was required to meet these needs in circumstances where there was now a large backlog of private members' bills in the system.

When questioned by the audience as to why such members could not tap into the resources of so-called 'Ireland Inc', she

explained that private members wanted ownership of their own bills, separate and distinct from official departmental input. English hopes to continue to develop the legal unit to provide this legal advisory and drafting facility in-house.

Overall, in managing a legal team, "relentless communication" is essential, she said, and self-awareness is very important: "Be measured in your approach and be adaptive."

Getting change across the line always means bringing the team with you. Even 'crazy' ideas should have their moment, if not necessarily in the final management plan, she concluded.

#### **Outsourcing**

One of the primary functions of James O'Rourke (senior legal counsel at pharmaceutical com-

pany Perrigo) is to manage the outsourcing of manufacturing.

Corporate acquisitions also rate high on his radar. After a corporate acquisition, change integration is a very difficult task to get right. Timing is key, he says. There is a limited time-window in order to integrate change under new management, and planned change usually takes longer than expected.

He advised getting staff out of their comfort zones quickly, post-acquisition – otherwise they fall back into rehearsed behaviours, potentially leading to the development of a 'them versus us' mentality.

Lawyers should offer a deep understanding of the business and an in-depth ability to measure new risks, he said. Risk awareness and assessment in new

WHEN LEGAL COUNSEL IS CEMENTED INSIDE THE ORGANISATION, THAT ADVICE BECOMES CENTRAL TO RUNNING THE BUSINESS





## Q FOCAL POINT THE VIEW FROM THE FLOOR

The delegates shared good and bad examples of change management. Time-zone management was discussed in terms of helping a global company to communicate internally, particularly in the task of getting all the relevant stakeholders correctly aligned in times of crisis.

RTÉ's legal director, Eamonn Kennedy, when asked about the

value of a crisis-management policy, said that such a policy could work very well, if available – and that such plans should identify who the important people are for any given situation, along with their contact details. Importantly, he said, crisis talks should exclude those whose contributions were not relevant or necessary in any par-

ticular situation. Perrigo's James O'Rourke agreed, adding that tensions could appear "where the communication isn't [taking place]". In addition, "scripted messages" from other departments would have to be adapted by legal counsel. Looking at sporting federations, it was suggested that legal executives getting paid for jobs that volunteers

used to do for free could lead to competitiveness, and could become a fraught issue in a crisis communications scenario.

Finally, the panel discussion heard that there was very little staff attrition in the legal departments of their organisations – pointing to reasonable job satisfaction in the in-house and public sector.





IT'S KEY TO GET ACROSS THE MESSAGE THAT LAWYERS ARE THERE TO HELP ACHIEVE NECESSARY CHANGES. LAWYERS MUST SHOW THAT LEGAL ADVICE IS 'WORTH IT'

fields – such as compliance, anti-bribery measures, sanctions and whistle-blowing – were all part of the lawyer's role in protecting a valuable business brand.

When legal counsel is 'cemented' inside an organisation, their advice becomes central to running the business.

O'Rourke pointed out that, nowadays, a positive attitude to change and communication was important in any job. He warned that we should never be surprised at internal resistance to change. "It's a natural human instinct to be suspicious of change," he said.

#### Future proof

Technological change was the focus for Alison Bradshaw (head of products legal at AIB). "Change requires us to get our

heads into the future," she began.

In any business, the budget simply must be found in order to comply with new regulations, which are coming at a fast rate.

In a post-Brexit world, the practice of British stakeholders seeking to influence European laws from their common law perspective would be unlikely to continue. In-house counsel should speak to their organisations about influencing EU law-making, post-Brexit, Bradshaw believes: "Otherwise, how are the Irish points of view going to be heard? The bottom line is we are going to have to step up and say them ourselves."

When recruiting, it's important to bear skills-gaps in mind, she advised. Legal teams are expected to generate business

efficiencies through embracing technology, she pointed out.

RTÉ's director of legal affairs Eamonn Kennedy talked about what internal lawyers can do when an external crisis hits their company. Trust was the most valuable business asset in a capitalist economy, he said. Corporations could suffer from failure, but also from the perception of failure, he pointed out.

"When a crisis hits, essentially your job is to assist the people who make the hard decisions," he said. The in-house lawyer must stay calm and establish all the facts.

"Assume nothing. Believe nobody. Check everything," he cautioned. "People forget, or they choose to forget, or they can't cope with the situation. It's

critical to work with all the relevant people and the media team."

The power of public opinion was very driven by technology. A good communications strategy should express a commitment to fixing a problem, he said, and there should be evidence of control.

"Communicating in a crisis is not for the faint-hearted," he said. "Preparedness is critical."

A press release drafted by lawyers ran the risk of being wordy and sounding evasive. "Every single word gets pored over by the public and media," he warned. "The tone is highly important. Avoid jargon and don't use acronyms."

Dynamic situations required dynamic approaches by the lawyers, he concluded.



# 'JAMMIES' SHINE SPOTLIGHT ON DISTRICT COURT

The District Court moved centre stage at the Justice Media Awards 2018, with some of the top gongs going to articles and TV programmes on our lower courts.

**Mark McDermott** reports

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*



WHAT THE REPORTERS FOUND IN THE DISTRICT COURT WAS AN OFTEN CHAOTIC SYSTEM, HAMSTRUNG IN VARIOUS WAYS BY LEGISLATION AND FEATURING INCONSISTENT AND, AT TIMES, IMPROPER PRACTICES

**T**he workhorse of the Irish judicial system – the District Court – got its day in the sun at this year's Justice Media Awards (JMA) when two of the top prizes went to journalists whose work focused on the mechanics of the court.

The JMA's Overall Award went to Paul Murphy and Doireann O'Hara of *RTE Investigates* for their TV programme 'Law and Disorder', an in-depth examination of the District Court across Ireland.

The judges said: "This truly exceptional body of work went deep into the District Court over 100 days of sittings,

involving more than 6,500 defendants. What the reporters found was an often chaotic system, hamstrung in various ways by legislation and featuring inconsistent and, at times, improper practices. This report goes to the heart of what the Justice Media Awards are about and led to serious public conversation and an immediate response from Government."

The District Court was also the focus of *Irish Times* journalist Rosita Boland's colour piece titled 'Irish life laid bare, one court case at a time'. The judges described it as "an important human interest and

public-service story, reported through fresh eyes on the District Court. This was one of the strongest entries across the 236 entries received for this year's awards. This fascinating exposé of daily life at the District Court was an excellent contribution to the public's understanding of this vital cog in Ireland's justice system."

The Justice Media Awards are the longest continuously running media awards in the country. A total of 120 of Ireland's leading journalists gathered at Blackhall Place on 21 June, with 36 awards and merits presented to the winners. Commenting, Law Society President Michael Quinlan said: "These awards are the pride of the Law Society, and we believe it is more important than ever to recognise and reward excellence in legal journalism."

Director general Ken Murphy added: "Some of the most high-profile and controversial news stories over the past year have been directly related to the law. Journalism that promotes a greater public understanding of the law, the legal system, and specific legal issues is of immeasurable value. This year's awards recognise some of the finest examples of the journalistic art."



Winners of the overall award, RTÉ's Doireann O'Hara and Paul Murphy, receive their award from director general Ken Murphy and president Michael Quinlan



## JMA RESULTS 2018

### Overall award

**Paul Murphy and Doireann O'Hara, RTÉ Investigates: Law and Disorder.**

### Print/online journalism (daily)

**Winner:** Rosita Boland (*The Irish Times*), 'Irish life laid bare, one court case at a time'.

**Merits:** Caroline O'Doherty (*Irish Examiner*), 'Backlash to whiplash: fraudsters hit hard in compo culture crackdown'; Conor Gallagher (*The Irish Times*), 'Women under-represented on juries in serious criminal trials'; Shane Phelan (*Irish Independent*), 'Judges give soft sentences to drivers who kill on roads'.

### Print/online journalism (Sunday)

**Winner:** Mark Tighe (*The Sunday Times*), 'No judgement for the judiciary'.

**Merits:** Adam Higgins (*The Irish Sun on Sunday*): 'Runaway jury'; Francesca Comyn (*Sunday Business Post*), 'A tsunami of repossessions'; John Lee (*Irish Mail on Sunday*), 'Blistering memo the garda chief must dread'; Shane Phelan (*Sunday Independent*), 'Analysis of the Disclosures Tribunal'.

### Print/online journalism (local)

**Winner:** Dan Danaher (*Clare Champion*): 'Special investigation about the environmental compliance of 17 Clare companies and environmental law' (series).

**Merit:** Carol Byrne (*The Clare Champion*): 'You can go safely from court'.

### Broadcast journalism (radio/podcast – national)

**Winner:** John Burke and Colm O Mongáin (*This Week*, RTÉ Radio One), 'A dog in need of teeth: revelations of critical under-resourcing in the policing watchdog GSOC'.

### Broadcast journalism (radio/podcast – local)

**Winner:** Jane Mulcahy (UCC 98.3FM), 'Humanising human rights'.

**Merit:** Fiona McGarry (Clare FM), 'Keeping kids out of crime'.

### Broadcast journalism (TV/video)

**Winner:** Paul Murphy and Doireann O'Hara, *RTÉ Investigates: Law and Disorder*.

**Merits:** *RTÉ News*, 'A significant first – Supreme Court proceedings are broadcast on television for the first time in the history of the State';

Seán Ó Méalóid and Sinéad Ní Churnáin (*RTÉ Scannal*), 'Sweepstakes'.

### Court reporting (print/online)

**Winner:** Mary Carolan (*The Irish Times*), 'More than 2,600 judged incapable protected as ward of court'.

**Merits:** Conor Gallagher (*The Irish Times*), 'Coverage of the Tom Humphries sentencing'; Francesca Comyn (*Sunday Business Post*), 'Anatomy of a shambles'; Helen Bruce (*Irish Daily Mail*), 'Key witnesses at the Disclosures Tribunal'; Sean Murray (*TheJournal.ie*), 'Contradictions, coercions and a private life made public: Keith Harrison's partner at the Disclosures Tribunal'.

### Court reporting (broadcast)

**Winner:** Frank Greaney (*Newstalk*), 'Reports from the Belfast rape trial on the *Pat Kenny Show*'.

**Merits:** John Cooke (*Drivetime*, RTÉ Radio 1), 'Baby Stevie's inquest'; Kevin McGillicuddy, Eoghan Murphy, Bernie O'Toole, Anne Norris, and Una Molloy (Shannonside FM), 'A year in the Shannonside courts'; Laura Hogan (TV3), 'The Belfast rape trial'.

### Human rights/social justice reporting

**Winner:** Sharon Lynch (TV3 News), 'Coercive control – reframing domestic violence'.

**Merits:** Cianan Brennan (*The Journal.ie*), 'The Public Services Card, privacy, and the rights of the adopted'; Conall Ó Fátharta (*The Irish Examiner*), 'Finally righting a wrong – the fight for Magdalene women wrongly denied redress'; Zara King (TV3 News), 'No legal access to live-saving drug'.

### International justice reporting

**Winner:** Catherine Fegan (*Irish Daily Mail*), 'The murder trial of Molly and Tom Martens in North Carolina'.

**Merit:** Paul O'Donoghue (*Fora.ie*), 'Inside the row between Fyffes and its Honduran workers'.

### Best headline/caption

**Winner:** Niall Murray (*Irish Examiner*), 'Leo Burdock tried to batter Black and Tans'.

**Merit:** Kieran Dineen (*The Irish Sun*), 'Licence to nil'.

### Newcomer of the year

**Winner:** Gráinne Ní Aodha (*The Journal.ie*).



# MEMPHIS ON MY MIND

The ‘Memphis model’ is an innovative first-responder programme that provides law enforcement-based crisis intervention training for helping those individuals with mental illness. **Anthony Fay** explains

ANTHONY FAY IS THE PRINCIPAL OF ANTHONY FAY & CO. HE WISHES TO THANK NIALL NOLAN BL AND LIAM DOYLE LLB FOR REVIEWING THE ARTICLE



A PERSON CAN BE TAKEN INTO CUSTODY UNDER SECTION 12 OF THE MHA 2001 WHERE A MEMBER OF THE GARDA SÍOCHÁNA HAS REASONABLE GROUNDS FOR BELIEVING THAT PERSON IS SUFFERING FROM A MENTAL DISORDER

I have acted as a legal representative for ten years on behalf of clients detained involuntarily under the *Mental Health Act 2001* (MHA) in psychiatric hospitals. Mental health tribunals primarily review the involuntary commitment of such patients on a periodic basis.

A disconcerting aspect of my experience has been the mixed feedback from service users of their interaction with An Garda Síochána. The gardaí are often first responders to an emergency crisis, where it can be a highly charged atmosphere. The force has saved the lives of some individuals with suicidal ideation through prompt and risky intervention. It has even been reported that the gardaí have had to fill the void in mental health services in Wexford after the closure of St Senan’s Psychiatric Hospital.

Some clients have, however, complained of being subjected to excessive force, unlawful arrest, and false imprisonment. Other claims include that the gardaí made fundamental errors of judgement that a person posed a threat, when in fact he/she was very unwell (for instance, having an epileptic seizure), and the situation could have, instead, been defused.

Amnesty International noted feedback from service users and relatives who had voiced concern at excessive use of force by

gardaí in some circumstances. In addition, the gardaí can be requested to assist in the removal of a person to an approved centre under sections 13(3) and (4). A psychiatric hospital or other inpatient facility is classified as an ‘approved centre’ under this statute. The Amnesty report found that this practice can add significantly to the distress, discrimination and prejudice experienced by the individual.

Irish case law is sparse on this matter, and access to justice may not be a realistic option for an aggrieved party who could lack capacity to provide instructions and are often impecunious litigants. The adversarial nature of the courtroom may be detrimental for an individual with a *labile condition*, with no automatic right to anonymity/reporting restrictions (*See DF v Commissioner of An Garda Síochána*). Present litigation is more challenging than an ordinary civil action. Section 73 requires that leave must first be granted by the High Court to institute civil proceedings.

It is therefore difficult to draw conclusions for these non-exhaustive reasons – in the absence of independent evidence, some of these allegations have been rationalised at tribunals to be attributable to symptoms like persecutory delusions, drug-induced psychosis, and the counter-argument that any force used may have been

necessary and proportionate.

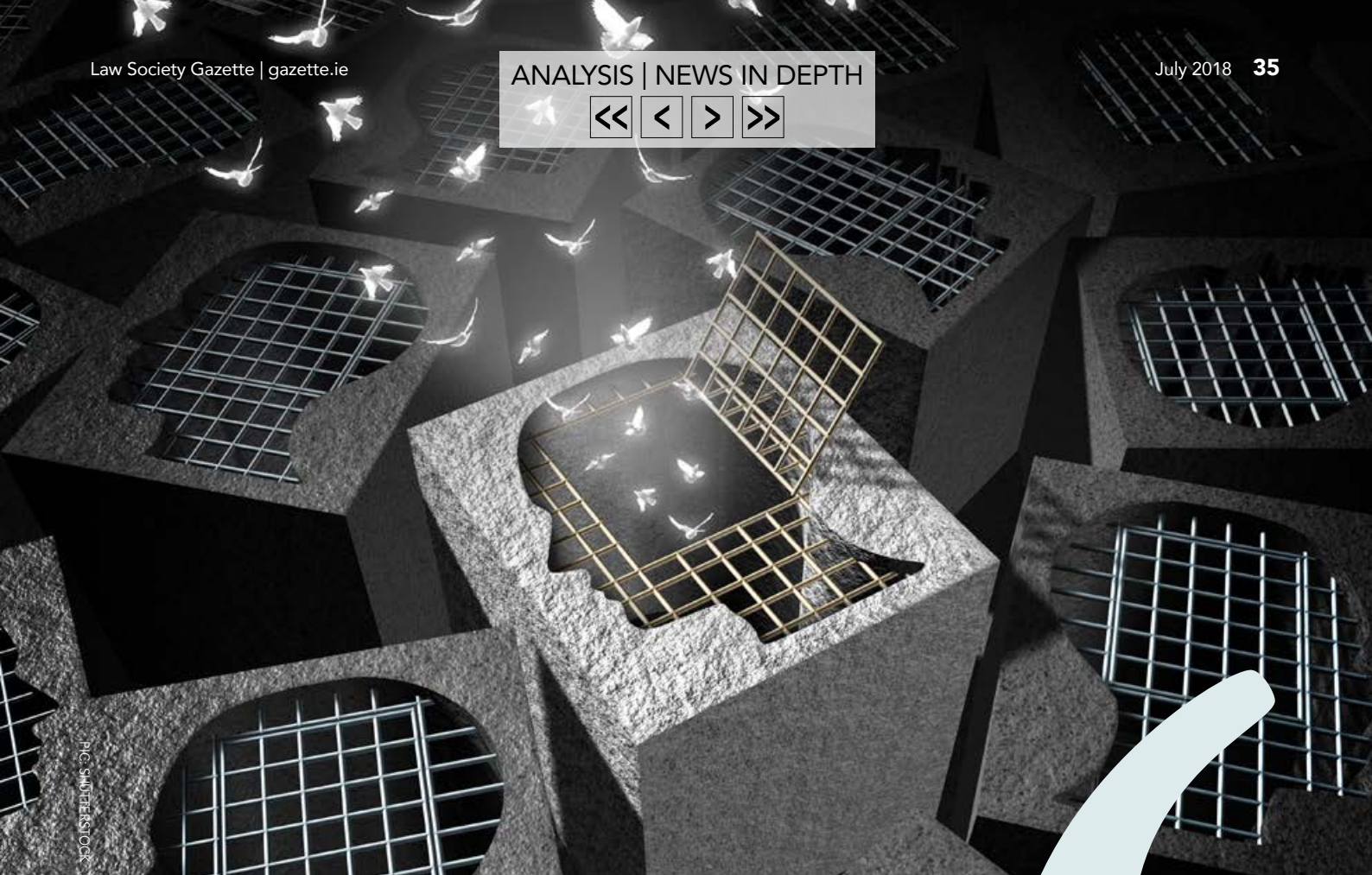
The present regime is, however, not robust enough. Reform should entail putting in place more rigorous safeguards to protect an extremely vulnerable group who often fear authority.

## Legislative reform

A person can be taken into custody under section 12 of the *MHA 2001* where a member of the Garda Síochána has reasonable grounds for believing that the person is suffering from a mental disorder and that, because of the mental disorder, there is a serious likelihood of the individual causing immediate and serious harm to himself/herself or to other persons.

The National Disability Authority proposed that section 12 be amended so that the gardaí should be obliged to bring the person to an approved centre for assessment and, only where that is not possible, should the person be kept in garda custody, and then only for the minimum time it would take for an assessment by a medical practitioner to take place.

The practice of transporting a person to a garda station should be the last resort, as otherwise it can exacerbate mental illness and even criminalise behaviour. The *Report of the Expert Group on the Review of the MHA 2001* recommended an expanded role for HSE authorised officers in



initiating the involuntary admission process. These individuals should be experienced mental health professionals and contacted immediately by the gardaí to assess the circumstances and, if necessary, make the application.

### Operational reform

The Memphis Crisis Intervention Team (CIT) is an innovative first responder programme that has become nationally known in the USA as the 'Memphis model' of pre-arrest and jail diversion. This programme provides law enforcement-based crisis intervention training for helping those with mental illness. Officers volunteer to receive 40 hours of training provided by mental-health clinicians, service users, family advocates and police trainers. Training includes information on signs and symptoms of mental illnesses, mental-health treatment, co-occurring disorders, legal issues

and de-escalation techniques.

One of the recommendations in the *Report of Joint Working Group on Mental Health Services and the Police 2009* was that a feasibility study on the appointment of crisis intervention teams jointly staffed by members of An Garda Síochána and mental health personnel should be undertaken and published.

There have been classes introduced for garda diversity liaison officers, including modules on mental health issues and intellectual disabilities. I would advocate a more ambitious target, including that the Memphis CIT model be fully implemented across Ireland, with drop-off medical centres operating seven days a week with a 'no refusal' policy. I would concur with the GRA's position that members of An Garda Síochána should be fitted with body cameras.


### Administrative reform

The Garda Síochána Custody Record does not explicitly screen

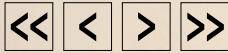
for mental illness. The *Treatment of Persons in Custody Regulations* also need to be modernised and avoid inappropriate descriptions such as 'mentally handicapped'.

Hospital records contain in-patient physical assessment forms/charts that note scars, lacerations, signs of neglect, and so on, upon admission of a patient. Should photographs also be taken of serious injuries sustained prior to/on admission if the patient requests or even consents? Again, should clinicians be obliged to notify next of kin as per the rules for use of seclusion?

There is a six-month ticking clock for the Oireachtas to cure the unconstitutionality of section 15(3) of the *MHA* further to the recent *AB v St Loman's Hospital* judgment.

Why not enact concurrently this much-needed reform and make amends for Ireland being the last EU country to ratify the *UN Convention on the Rights of Persons with Disabilities*? 

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ALL PICS: CIAN REDMOND

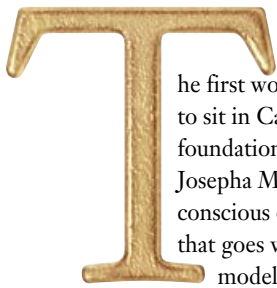


# Woman in the House

Josepha Madigan, fresh from her success in leading the recent repeal campaign, is determined to remove a constitutional clause that she believes insults working women. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE





he first woman solicitor to sit in Cabinet since the foundation of the State, Josepha Madigan is highly conscious of the responsibility that goes with being a role model. The Fine Gael minister remains only the 19<sup>th</sup> woman to have sat at the Cabinet table.

“Law is an incredible background for politics, because you are dealing with legislation all of the time. All the skills you use as a solicitor really transfer into politics. And I would love to see more solicitors in politics,” she says.

She was holding down dual roles as a practising solicitor and a TD for almost a year when her appointment in July 2017 as chair of the Committee on Budgetary Oversight led to her decision to focus full time on her political career. Almost five months later, on 30 November 2017, she was appointed as Minister for Culture, Heritage and the Gaeltacht.

“It was really difficult for me to let go of my profession, because one’s identity is caught up for so long with being a solicitor,” she says. “I was terrified not renewing my practising certificate. It was like jumping off a precipice. I’m at peace with it now, though. I hope I stay as long as I can here, but if I have to go back to practice, I will.”

She believes that solicitors have the right skillset for politics and can really effect change in a way that isn’t possible from any other sphere. Madigan gives the example of her private member’s bill to reduce the waiting time for divorce from four to two years.

“I know it’s an uncertain profession and it’s difficult and challenging. But you can achieve so much good. If any solicitor gets the opportunity, they should put themselves forward. They will find their niche, based

## ≡ AT A GLANCE

- Josepha Madigan is the first female solicitor to sit in Cabinet since the foundation of the State
- On law as a background for politics – and why more solicitors should consider entering the political arena
- Letting go of the profession was ‘like jumping off a precipice’
- Her role as campaign coordinator for the repeal of the Eighth Amendment
- Article 41.2 – why she thinks it should go

on their experience in whatever firm they’ve been with.

“There is huge fulfilment in this role, despite all the long hours and all the pressure that goes with it. It is hugely rewarding and fulfilling to be able to deliver on things.”

### Finding meaning

She quotes Carl Jung, that the first part of one’s life is about ambition, the second is about meaning. And Josepha has clearly found meaning and a sense of fulfilment in successfully leading the campaign to repeal the Eighth Amendment.

Just months into her ministry, she took a phone call from the Taoiseach, asking her to be the front-woman for the campaign.

“I was only four months a minister when I was asked to be campaign coordinator, which even the Taoiseach said, when he rang, was a big ask – the biggest ask of my career to date. It was such a public, difficult topic. It was a huge privilege to do it, obviously.”

After the vote, she divulges that she was

very relieved: “The joy has come later. I feel more joyous now,” she says. “In a sense, I was holding my breath for the eight weeks. It was so intense. There was so much work around the campaign and organising my own team [of 16]. There were many different moving parts, so it was more relief that we actually achieved what we set out to achieve.”

She continues: “It’s not a celebratory topic, even though it has very positive ramifications for future generations in terms of allowing women a choice. The subject matter itself is upsetting, really, so I understand how people wouldn’t feel celebratory about it. But I have no issue with women celebrating. Everybody deals with a result like that in different ways.”

Asked whether legislation on assisted dying might be next on the agenda, Madigan cautions that all the wishes of the Irish people have to be taken into account: “Whether we are at that point remains to be seen. We need to take each topic as it comes along.”

In terms of the recent referendum, she observes: “The ‘no’ voters felt as passionately about a ‘no’ vote as we felt about a ‘yes’ vote. And I understand that, particularly as a Catholic. The irony didn’t escape me. At the same time, there were 66% who voted in favour of this, and we have to reflect that in the legislation. And I do think that we are a more compassionate and kinder Irish society than we were, and it’s really about time that issues like this were dealt with.”

Madigan is adamant that a pro-choice position is reconcilable with Catholic belief. So does she believe that human life is sacred?

“Human life is sacred, of course, absolutely it is. For me, it’s about respecting the choice of somebody else, and not standing in judgment of them. It is their decision. And, ultimately, God gave us free will, and that is the main tenet as far as I’m concerned, and



LAW IS AN INCREDIBLE BACKGROUND FOR POLITICS, BECAUSE YOU ARE DEALING WITH LEGISLATION ALL OF THE TIME. ALL THE SKILLS YOU USE AS A SOLICITOR REALLY TRANSFER INTO POLITICS. AND I WOULD LOVE TO SEE MORE SOLICITORS IN POLITICS



## A WOMAN'S PLACE IS IN THE HOUSE – BY THAT I MEAN LEINSTER HOUSE – AND NOT IN THE HOME



that's how I reached my own decision. That's how I made peace with it because, ultimately, it's up to each woman to decide for herself, rightly or wrongly, what she wants to do. It's not for me to impose my views on someone else."

On the question of whether laws lead or determine human behaviour, the minister is firmly of the opposite view – that societal behaviour changes, and the law must follow.

Legislators are reactive rather than proactive, she says. "Society changes, and our laws are constantly trying to reflect that change. Change is happening at a really fast pace and our laws need to reflect that – and often governments, even opposition parties, come under pressure from society if there is an issue strong enough, and they need to change the legislation.

"For example, when I was a backbencher – which is only six months ago – I brought in a private member's bill in relation to contempt of court, dealing with trial by social media in criminal trials, and the outcome of those."

As technological change accelerates, the minister wishes to ensure that social media will not influence the outcome of criminal trials – hence her desire to update the law on contempt of court.

To back up her perspective, she points out that the mainstream media cannot write anything that would influence a jury, in any way, during the course of a trial. The same constraints should apply to social media, Madigan believes. But the bill needs a co-sponsor to progress, since it cannot be proposed by a minister.

"After a period of time, laws can

become archaic and need to be updated, modernised and clarified," she says. "It's very important that laws, particularly in the area of technology, keep up to date." Society changes, she believes, but ultimately people stay the same.

### Quicker divorce times

In her desire to introduce change in Ireland's divorce legislation, Madigan found little cross-party support for another private member's bill that aimed to reduce the waiting period for divorce to one year. Having taken soundings from different Oireachtas members, her original proposal has now been amended to a two-year wait. Madigan believes the bill is achievable and will move forward next summer.

"I think we should consider taking the



divorce clause out of the Constitution entirely,” she says. “I think there is now an appetite for that, that heretofore wasn’t there.

“Originally, I brought my private member’s bill because of my background of 20 years in practising family law. The four-year rule was just too difficult for people to countenance, and too long a period of time.

“When I spoke to Oireachtas members, they felt that two years was a balanced approach, that it reduced the acrimony and the costs – from an emotional as well as a financial perspective.

“Ultimately now, when we see the result of repealing the Eighth, I think we need to consider quite strongly removing the divorce clause from the Constitution,” she says.

Madigan’s instincts on this are anecdotal so far, and she admits that more research needs to be carried out: “If it’s something that I think is achievable by way of referendum – to take the whole divorce clause out of the Constitution in its entirety, as we have with repealing the Eighth – then I think we should do that, rather than what I was attempting to do, which is the incremental approach, because divorce

## SLICE OF LIFE

### ■ Who has been the most influential person in your personal life – and why?

My Dad. He wasn’t afraid of anyone or anything.

### ■ Most influential person in your business/ political life – and why?

Leo Varadkar. He’s decisive, charismatic and visionary.

### ■ Your favourite song and band?

*Will You?* by Hazel O’Connor. *O mio babbino caro*, from the opera Gianni Schicchi. I also like U2.

### ■ How do you chill out at the end of a hard working day?

Walk the dog or read a book.

### ■ Have you achieved work/life balance?

No. Politics is my life.

### ■ Best advice to lawyers?

Read between the lines. Listen to what isn’t being said.

### ■ Best advice to politicians?

Float like a butterfly. Sting like a bee.

### ■ Your favourite artist and work of art?

Laura Cronin. My favourite work is *A Convent Garden*, by William John Leech.

### ■ Your favourite author and book, favourite

### film, and what you’re reading for fun.

I’m reading Sally Rooney, *Conversations with Friends*. My favourite is *The Tibetan Book of Living and Dying*, by Sogyal Rinpoche. My favourite film is *Jean de Florette* with Gerard Depardieu.

### ■ Best lesson learned in life.

Be yourself.

### ■ Pet hates of being a politician?

Social media trolls.

### ■ Do you love the adulation?

What adulation!

### ■ Are you a fluent Gaeilgeoir – or have you had to take lessons?

Ní Gaeilgeoir mé, ach déanaim iarracht an Ghaeilge a úsáid an oiread agus is féidir liom, nuair is féidir liom.

### ■ Unfulfilled ambition – what’s top of the bucket list?

The Camino.

### ■ Name one thing that the Gazette’s readers are unlikely to know about you that would most surprise them?

I’m a Reiki master.

THERE ARE WOMEN WHO REMAIN IN THE HOME AND MIND THEIR CHILDREN, AND THEY NEED TO BE RESPECTED AS WELL. I CERTAINLY DON’T WANT TO BE IN ANY WAY DEMEANING THEIR WORK



## I THINK WE SHOULD CONSIDER TAKING THE DIVORCE CLAUSE OUT OF THE CONSTITUTION ENTIRELY. I THINK THERE IS NOW AN APPETITE FOR THAT, THAT HERETOFORE WASN'T THERE

after four years has been there for 20 years. Definitely, something has to change in that regard," she says.

### Women in the home

Madigan confirms that a referendum to remove the constitutional clause on 'women in the home' will take place in autumn 2018. (This will be joined by a proposal to remove the prohibition on blasphemy from the Constitution.) It has been reported that the decision to hold both referenda was taken at a recent Cabinet meeting.

Minister Madigan says that the Cabinet agreed that this approach, if passed in the referendum, "would achieve the objective of removing a provision from the Constitution that ascribes a stereotypical and limited role to women". She cautions, however, that much groundwork first needs to be done.

Article 41.2.1 states: "In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved."

Article 41.2.2 continues: "The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home."

"Particularly as a woman who works outside the home myself, I think the way it's phrased is anachronistic," says Madigan. "It's actually insulting to working women. It's outdated and outmoded, and I believe the majority of women will agree with me on that.

"My reading of it is that it doesn't speak to women inside the home. It speaks more to women outside the home, that they are neglecting their duties in some way, that they are not being a good role model as a mother. They feel guilt and shame reading it, which they shouldn't, and that has to be changed.

"If our Constitution is saying that, it's a really powerful symbol to Irish society. I

think Irish women are ready for that change.

"A woman's place is in the house – by that I mean Leinster House – and not in the home. While, before, people may have been of the view of 'leave it as it is', after repealing the Eighth Amendment, it's a pivotal moment in time for women.

"There are a lot of men now doing the child-rearing, just as many as women, and I think that should be reflected.

"There may be concern about carers in the home, and we need to look at that. If we bring a referendum, we want to make sure that we win it, and get the outcome that we want. So we need a proper educative conversation about it, so that people engage with it and understand what we are saying about it.

"There are women who remain in the home and mind their children, and they need to be respected as well. I certainly don't want to be in any way demeaning their work. What they do is important as well, but the way that particular clause is phrased to me smacks of a bygone era and should be removed, in my view.

"As it stands, it has to change. I think it's insulting to women who work outside the home. This is about inclusivity and respecting people's views. I don't think you should have a constitution that sounds prejudicial to any particular sector of society. As it stands, when I read it, I don't like it," she says.

### Tax-paying economic units?

What about the fear that removing the clause, which acknowledges the value of women's work in the home, will undermine those people who choose to stay in the home? Will this change – inadvertently or otherwise – push all parents to become tax-paying economic units, however small or numerous their children?

"You have to respect people's choices. The work of a mother is probably the hardest

job, dealing with children all day long and getting no acknowledgement of that," the minister says.

Referring to the female majority among newly qualified solicitors, she says that these women shouldn't feel in any way undervalued by working outside the home.

She mentions cross-departmental gender equality initiatives to help women get into the workforce, though also accepts that there are women who would rather be at home, but have no choice but to work because of economic reasons.

"The reason I joined Fine Gael over Fianna Fáil, though my late father was a Fianna Fáil councillor, and a solicitor, was because I felt it was a progressive party. That doesn't mean that there is an absence of family values [in Fine Gael]. It's just less prejudicial, in my view, about moving forward.

"Fine Gael isn't afraid of dealing with really contentious, difficult issues – and I respect that, and that's one of the reasons I joined the party.

"Enda Kenny brought the issue of repealing the Eighth to the Citizens' Assembly, and took it to the Programme for Government, and Leo Varadkar delivered on it. Would another party do that? I don't know," she says.

Was it difficult to join Fine Gael, coming from a Fianna Fáil background? "Some of my family are still Fianna Fáil ... a few of them.

"My father died two weeks before the local election, so he didn't actually see me elected. But I did have a conversation with him and he knew, obviously, that I was running as a candidate.

"He was okay about it. He may have preferred that I was Fianna Fáil. But what he liked was that I had my own mind, that I didn't follow, and that I decided myself what I wanted to do. I think he respected that ultimately."



# Pedigree chum

As lawyers, what do we really know about the path of legislation that we, as a profession, will pore over and interpret for years after it has been enacted?  
**Ben Mannering** takes us on walkies through the process

BEN MANNERING IS A SOLICITOR AT THE STATE CLAIMS AGENCY. THE VIEWS EXPRESSED ARE PERSONAL AND SHOULD NOT BE TAKEN AS THE VIEWS OF THE NATIONAL TREASURY MANAGEMENT AGENCY



Recent comments by the attorney general concerning the *Judicial Appointments Commission Bill* have highlighted the journey that legislation has to take – from ‘dog’s dinner’ to ‘table d’hôte’ and beyond.

Legislation can come before the Dáil in many guises. However, it can broadly be separated into:

- Primary legislation – bills that can take many forms, such as private members’ bills, money bills, private bills, and Government bills, and
- Secondary legislation – statutory instruments (SIs) and bye-laws.

Secondary legislation is by far the more straightforward and, as a consequence, most numerous. A perusal of the *Irish Statute Book* website shows that, in 2017 alone, there were 646 SIs enacted, ranging from the *Civil Liability and Courts Act 2004 (Commencement Order) 2017* to the *European Union (Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography)*

(*Amendment*) Regulations 2017 and SI 142/2017, the *European Union Habitats (Knockacoller Bog Special Area of Conservation 002333) Regulations 2017*.

The diversity of these statutory instruments illustrates not only the diverse nature of the business of the State, but the complexity of secondary legislation.

Government departments will generally start the process by submitting draft SIs to Government where Government approval is required by statute, where the Government has so directed, where the minister concerned thinks fit, or where the AG so advises the minister concerned.

The SI, if significant, may require a [regulatory impact analysis \(RIA\)](#). An RIA is a tool used for the structured exploration of different options to address particular policy issues. It is used where one or more of these options is a new regulation or regulatory change, and facilitates the active consideration of alternatives to regulation or lighter forms of regulation.

## ≡ AT A GLANCE

- The path of primary legislation through the Oireachtas is as follows: first, the bill is introduced to either the Dáil or Seanad (the bill will repeat this process in both Houses)
- Then, there is general debate on the bill, the reasons for same, and the principles enunciated in the bill
- At the third stage (also known as committee stage), amendments are taken and sent for approval to Government
- Then there is the report stage, where further amendments can be considered
- Last, there’s the final discussion and vote – there are rarely any further amendments



## IN THE DÁIL, ONLY THE GOVERNMENT AND GROUPS PROVIDED FOR IN STANDING ORDERS (SEVEN OR MORE DEPUTIES) MAY PRESENT BILLS (ONE BILL AT A TIME FROM EACH GROUP)

The draft legislation is then sent to the OPC (Office of the Parliamentary Counsel, part of the Attorney General's office) to be formally drafted, settled, and proofed. Thereafter, the official draft is submitted to Government with a memorandum setting out the background, OPCs approval, the full title in English and Irish, and any approval required from the Oireachtas.

The secretary general of Government will notify the promoting department, and any concerned departments, of the making of the order and lay it before the Oireachtas and arrange for a notice to be published in *Iris Oifigiúil*. Unless revoked, these are automatically deemed to be passed within 21 sitting days.

It is most unusual for a regulation to

be debated, still less vetoed or revoked, so it is a passive rather than an active process. Either house may annul a statutory instrument by a simple majority (for example, a regulation approved unanimously by the Dáil can be **annulled** by a majority of one vote in the Seanad). So much for the dog's dinner.

### Primary legislation

Primary legislation, however, is a whole different pedigree. The road map on the next page (adapted from the *Department of the Taoiseach Cabinet Handbook*, p47) gives an idea of the meandering path the 'poor dog' has to take from the proposal for a new policy to becoming a bill in the Dáil or Seanad. The graph does not reflect the

pre-legislative scrutiny that is now required; nor does it reflect the political reality of each stage, the exigencies of the minister and the department tasked (over the course of the elected period in office) with the general day-to-day aspects of departmental work.

It is important to note here that the bill is simply invited to the Dáil at the end of this roadmap. A further shaggy-dog journey awaits once it sets its paws inside the Oireachtas.

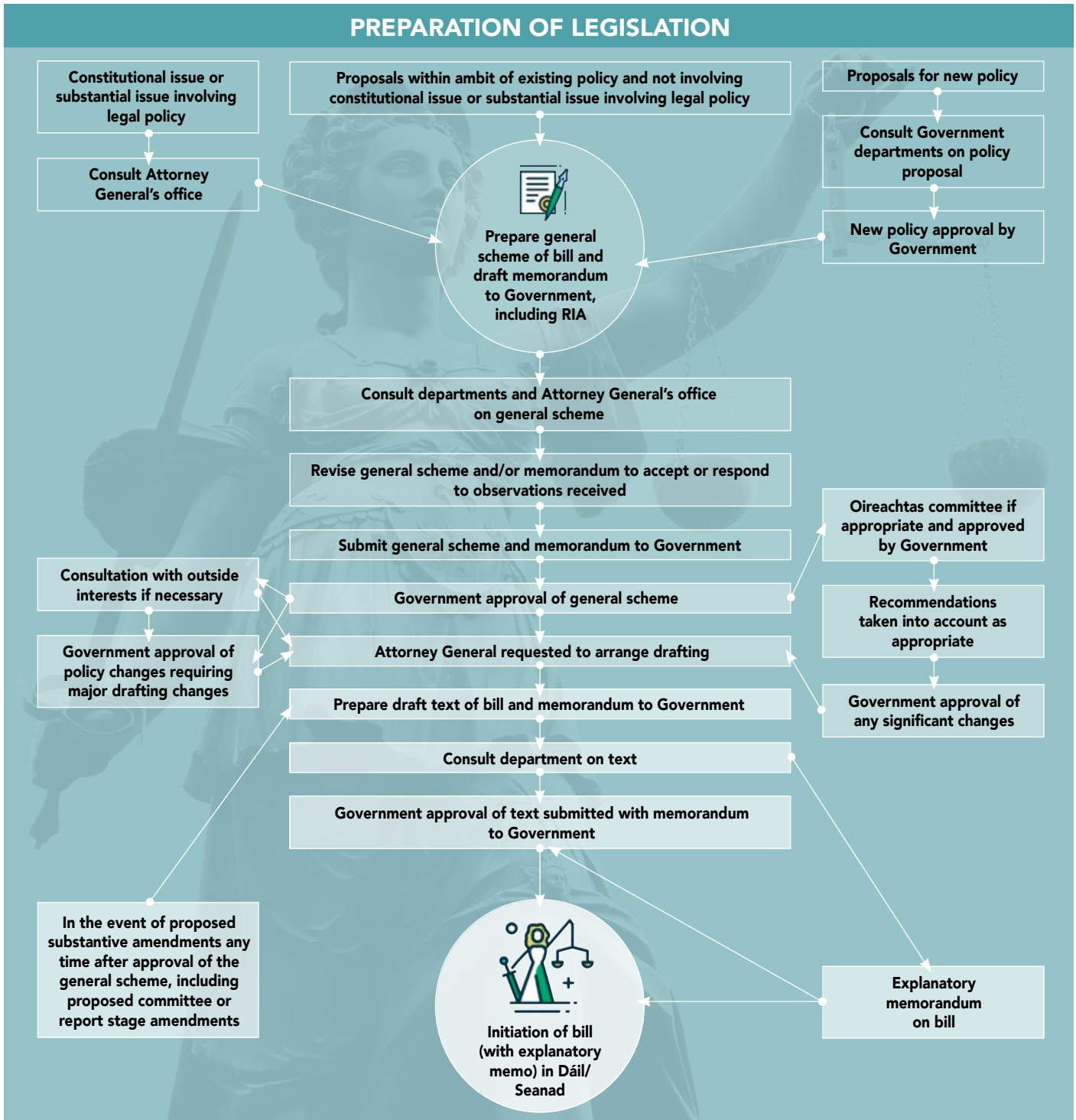
### Path through parliament

Having brought the dog to the water bowl, surely it's easy to make it drink? The average length of time it takes a bill to become law is not published. However,



BILLS MAY BE INITIATED IN EITHER THE DÁIL OR THE SEANAD. EXCEPTIONS TO THIS GENERAL RULE ARE MONEY BILLS (DÁIL ONLY), BILLS TO AMEND THE CONSTITUTION (DÁIL ONLY), AND PRIVATE BILLS (SEANAD ONLY)

PREPARATION OF LEGISLATION



Oireachtas role in legislative process. It is important to note that, at the end of this roadmap, the bill is simply invited to the Dáil. (A further 'shaggy-dog' journey awaits once it sets its paws inside the Oireachtas)



it will greatly depend on the complexity of the bill, the Government's majority or minority status, the political sensitivity of the bill, and the legislative priority of the Government at the time. These priorities are generally set out in the Government's Programme for Government, although it will obviously be subject to opposition and competing interests, especially in a minority Government.

The path through the Oireachtas is as follows:

- *First stage* – the bill is introduced to either the Dáil or Seanad (the bill will repeat this process in both Houses),
- *Second stage* – general debate on the bill, the reasons for same, and the principles enunciated in the bill,
- *Third stage* – Also known as committee stage, amendments are taken and sent for approval to Government,
- *Fourth stage* – report stage, where further amendments can be considered,
- *Fifth stage* – final discussion and vote – rarely any further amendments (back to Dáil or Seanad, and repeat).

#### *First stage*

While a bill can be published without the prior permission of the House, leave of the house is generally sought except in certain circumstances. Bills may be initiated in either the Dáil or the Seanad. Exceptions to this general rule are money bills (Dáil only), bills to amend the Constitution (Dáil only), and private bills (Seanad only).

A bill can, however, be initiated two ways:

- In the Dáil, only the Government and groups provided for in standing orders (seven or more deputies) may present bills (one bill at a time from each group),
- In the Seanad, the leader of the Seanad may present a bill on behalf of the Government. Groups provided for in

standing orders (five or more senators) may also present a bill, and there may be three bills at a time from each group.

#### *Second stage*

This stage deals with whether the law should be amended as envisaged in the bill. The House discusses what the bill contains and also what might be relevantly included:

- A debate will take place on a motion 'that the bill be now read a second time',
- Individual speaking times are limited. While the proposer may reply to the debate, other members may speak only once,
- There are restrictions on the amendments that can be moved. Amendments are to the motion only – not to the text of the bill – and may be related to time (postponing the second reading to a later date) or to reason (giving a reasoned argument against the second reading).

#### *Third stage*

This is where a detailed examination and improvement to the bill occurs. Consideration of the bill is carried out, section by section, either in committee of the whole House, or select committee, or special committee.

Relevant amendments may be made to the bill. Amendments that are not relevant may be made, however, if the House has given an appropriate instruction to the committee.

Members may speak more than once on each question (that is, on each section or amendment), but the proposer usually replies.

#### *Fourth stage*

At this stage, reviews are conducted of changes made at the third stage. Consideration is limited to amendments tabled, which arise from proceedings at third stage.

Members may speak only twice on each amendment, the second contribution being limited to two minutes. The proposer of an amendment may reply to the debate. The bill may be recommitted as a whole, or in respect of certain sections or amendments only. This removes the restrictions mentioned above.

#### *Fifth (final) stage*

At this point, legislators consider whether the bill, in its current form, would constitute good law. A debate takes place on a motion 'that the bill do now pass'. The proposer may also reply to the debate, and other members may also speak.

The bill, if passed, is then sent to the other House, and the stages are typically repeated. There are specific rules for amendments made in the Seanad for Dáil-introduced bills, and vice versa for Seanad-introduced bills.


### **Enactment**

The President is required to sign a bill presented to him or her for signature not earlier than the fifth day or later than the seventh day after it has been so presented (article 25.2.1 of the *Constitution*).

A bill becomes law on the day it is signed by the President and, unless the contrary intention appears, comes into operation on that day (article 25.4.1). A bill may, for example, contain provision for its commencement (in whole or in part) by way of ministerial order.

### **Ruff with the smooth**

After that whirlwind journey, it is easy to see how legislation can become a canine catastrophe. The many competing interests at the various Oireachtas stages, the consultation required to commence drafting of the bill, and simple politics, are more than enough for the drafters to potentially lose sight of the initial public policy put forward.

Last year, the Government managed to pass a chihuahua-sized 35 acts, some being bills since 2014. Compare this to the St Bernard of statutory instruments mentioned above, and one has to consider whether eating small and often is preferable to the dog's dinner that can be the enactment of legislation. 

“SECONDARY LEGISLATION IS BY FAR THE MORE STRAIGHTFORWARD AND, AS A CONSEQUENCE, MOST NUMEROUS





# Conventional thinking

Lawyers play an important role in the exercise and protection of human rights, particularly within the judicial system. **Patrick Ambrose** explains

PATRICK AMBROSE IS THE LAW SOCIETY'S REPRESENTATIVE TO THE WORKING GROUP FOR THE EU CONVENTION ON THE PROFESSION OF LAWYER AT THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE

# A

s the European Court of Human Rights has often recognised, lawyers have a central position in the administration of justice as intermediaries between the public and the courts, and therefore play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence.

Consequently, for members of the public to have confidence in the administration of justice, they must have confidence in the ability of the legal profession to provide effective representation.

Lawyers also play a role in ensuring effective protection of individual rights by providing legal advice prior to judicial proceedings and in alternative dispute resolution proceedings. It can also be recalled that the domestic remedy for alleged violations of rights required under article 13 of the *European Convention on Human Rights* need not necessarily be judicial to be effective: legal advice and representation in administrative proceedings, including in such important areas as social security, employment or asylum, are also important to ensure effective protection of ECHR rights.

## Threats

As a consequence of this role as defenders of human rights, lawyers can come under considerable pressure from

the executive and legislative powers, as well as sometimes the judiciary and non-state actors. While in the majority of Council of Europe member states, human rights defenders are free to work in an environment conducive to their activities, there is deep concern about widespread harassment, threats, attacks, and reprisals against lawyers in member states such as Azerbaijan, the Russian Federation, Ukraine, Georgia and Turkey (in some cases, apparently, the systematic result of deliberate policy).

Restrictive legislation on registration, funding, or on anti-terrorist measures is increasingly used to restrict lawyers' activities, bring serious criminal charges, and to condemn

them to long prison sentences. When human rights' defenders themselves become targets of oppression, this sends a devastating message to those counting on their help.

However, there have also been problems closer to home in recent years. In Greece, the apartment of a lawyer representing Syrian refugees was broken into by individuals later identified as police officers, while lawyers in France and Italy have received death threats in connection with their work on behalf of clients. Even in Britain, the prime minister had encouraged the Solicitors' Regulatory Authority (SRA) to bring disciplinary proceedings against a particular firm of solicitors, and lengthy correspondence between a government ministry and the

## AT A GLANCE

- Public confidence in the administration of justice relies on confidence in the ability of the legal profession to provide effective representation
- Lawyers can come under considerable pressure from the executive and legislative powers, as well as sometimes the judiciary and non-state actors
- In January, the Council of Europe adopted a recommendation on the development of a convention on the profession of lawyer, which would be a further step towards the effective protection of the rule of law



PIC: SHUTTERSTOCK

Taking an unconventional approach in *My Cousin Vinny*

## WHEN HUMAN RIGHTS DEFENDERS THEMSELVES BECOME TARGETS OF OPPRESSION, THIS SENDS A DEVASTATING MESSAGE TO THOSE COUNTING ON THEIR HELP

SRA revealed that both the disciplinary proceedings and the reform of regulation of legal services then being considered by the government were discussed in a perceived attempt to subject the SRA to pressure.

### Existing international standards

The right to a fair trial is enshrined in numerous international and regional human rights treaties and, in the EU, is protected under article 6 of the ECHR, which directly addresses several issues of relevance to the exercise of the profession of lawyer.

In criminal proceedings, these include the right to have adequate time and facilities for the preparation of the defence, and the right to legal assistance of the individual's own choosing or, if the individual does not have sufficient means to pay for it, to free legal assistance when the interests of justice so require. These provisions have been elaborated upon in the case law of the European Court of Human Rights, which covers issues, such as the right to assistance and support by a lawyer throughout criminal proceedings from the moment of being

taken into police custody, the right to legal representation during trial *in absentia*, legal aid, the procedural requirements of adversarial proceedings, access to evidence, and consultation with a lawyer. There is a recognition that these critical rights associated with the lawyers' role in maintaining the rule of law that fall outside the scope of the ECHR need a protection mechanism at European level.

Beyond the binding treaty-based standards, there are various other instruments exhorting the protection of the



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6 Sept	<b>Essential General Practice Update 2018 –</b> Ballygarry House Hotel, Tralee, Co Kerry	6 (by Group Study)	€115 <i>Hot lunch and networking drinks included in price</i>	
14 & 15 Sept	<b>Construction Law – An Introduction</b>	10 General (by Group Study)	€350	€425
14 & 15 Sept & 28 & 29 Sept	<b>The Fundamentals of Commercial Contracts</b> (The fee includes an iPad & interactive eBook on Commercial Contracts)	20 Hours including 3 Hours Management & Professional Development Skills (by Group Study)	€1,200	€1,100
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26 Sept	<b>The In-house Solicitor – Dealing with Change and</b> <b>Upheaval</b> – in partnership with the Limerick and Clare Bar Associations – Strand Hotel, Limerick	2.5 Management & Professional Development Skills (by Group Study)	€55	
28/29 Sept & 12/13 Oct	<b>The Fundamentals of District Court Civil Procedure,</b> <b>Drafting &amp; Advocacy Skills</b>	18 CPD hours including 6 M & PD Skills (by Group Study) and 1 Regulatory Matters (by Group Study)	€750	€850
Starts 12 Oct	<b>Law Society Finuas Skillnet Executive Leadership 2018/19</b> National Gallery of Ireland Leadership in Context – 12 Oct Leading Self – 2 & 3 Nov Leading People – 25 & 26 Jan 2019 Leading Business – 22 & 23 Mar 2019	Full Management & Full General for 2018 and 2019 (by Group Study)	€3,900	€4,580
18 Oct	<b>Property Law Annual Conference 2018</b> in partnership with the Conveyancing Committee	3.5 General (by Group Study)	€150	€176
23/24 Nov & 18/19 Jan	<b>Fundamentals of Tech &amp; IP Law</b> (Course Includes iPad & Interactive E-Book on Technology & IP Law)	10 General 2018 10 General 2019 (by Group Study)	€1,100	€1,200
27 Nov	<b>Annual Family &amp; Child Law Conference –</b> in partnership with the Family & Child Law Committee	4.5 General (by Group Study)	€150	€176
Starts 30 Nov	<b>Property Transactions Masterclass</b> Attend 1, 2 or all 3 Modules <b>Module 1 – 30 Nov &amp; 1 Dec   Module 2 – 11 &amp; 12 Jan 2019</b> <b>Module 3 – 8 &amp; 9 Feb 2019</b> <i>There is a reduced fee of €1,625/1525* for attending all three modules (iPad included) OR €1,275/€785* (NO iPad)</i>	8 General plus 2 M & PD Skills (by Group Study) per Module	€570 per module <i>(iPad included in fee)</i>	€595 per module <i>(iPad included in fee)</i>
			€270 <i>(iPad not included in fee)</i>	€295 <i>(iPad not included in fee)</i>

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## THERE IS A COMPELLING CASE FOR A EUROPEAN CONVENTION ON THE PROFESSION OF LAWYER TO ESTABLISH BINDING OBLIGATIONS IN RESPECT OF RIGHTS ENVISAGED BY THE 2000 RECOMMENDATION THAT ARE NOT ALREADY REFLECTED IN THE ECHR

role of lawyers, notably [Recommendation R\(2000\) 21](#) of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, which covers a range of issues, such as the freedom of exercise of the profession of lawyer, the role and duty of lawyers, and access for all persons to lawyers. Lawyers' associations have also been active in promoting standards in this area, for example, the International Bar Association – which has issued *Standards for the Independence of the Legal Profession* – and the Council of Bars and Law Societies of Europe, which has adopted a *Charter of Core Principles of the European Legal Profession*.

### Towards a European convention

On 25 January 2018, the Parliamentary Assembly of the Council of Europe (PACE) adopted [Recommendation 2121 \(2018\)](#) on the development of a European convention on the profession of lawyer. While highlighting the fact that lawyers continue dealing with harassment, threats, and attacks in some states, the PACE believes that this situation proved the necessity to reinforce the legal status of the 2000 recommendation by integrating its provisions into a binding convention and adding to it an efficient control mechanism. The PACE therefore called on the Committee of Ministers to draft and adopt a convention on the profession of lawyer, based on the standards set out in the 2000 recommendation.

The 2000 recommendation is an ideal starting point for the proposed convention, as it is an international instrument that has already commanded sufficient support in the Committee of Ministers of the Council of Europe to be adopted as a recommendation to the governments of all member states.

It defines a 'lawyer' as a person who, according to the national law of the member state, "is qualified and authorised to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts, or advise and represent his or her clients in legal matters". Adopting this definition under the convention would respect variations across member states as to what constitutes a 'lawyer' and thereby make it easier for a convention to be agreed. For example, in-house lawyers in Ireland, Britain, Greece, Spain and Poland have equivalent status with external lawyers and therefore come within the 2000 recommendation definition of a 'lawyer', while those operating in jurisdictions without formal regulation by a professional lawyers' association in the practice of law would not constitute a 'lawyer'.

In addition, the 2000 recommendation sets out basic principles underlining the fundamental role of lawyers and promotes self-governing bar associations and professional lawyers' associations that are independent of the authorities or the public.

However, the continuing attacks on lawyers in the years since the 2000 recommendation was adopted show that the recommendation has not been fully effective. In addition, while some of its provisions are effectively guaranteed at European level by the ECHR (especially by articles 6, 8 and 10), other provisions that serve to protect lawyers performing their duty to represent their clients effectively and independently, to protect their rights and to uphold the rule of law, do not have binding effect. Adopting a suitable enforcement procedure would serve to anchor the protection of these rights at a European level, just as the convention will

also reassert them in domestic law. The experience with the 2000 recommendation shows that a rapid mechanism for enforcement at the European level is also needed to supplement domestic compliance, and this can be achieved by drawing on existing institutional structures in the Council of Europe to facilitate oversight of compliance with these rights at a European level (for example, through petitions to PACE, and the measured scrutiny of annual reports by a committee of experts appointed by the Committee of Ministers).

### Compelling case

There is a compelling case for a European convention on the profession of lawyer to establish binding obligations in respect of rights envisaged by the 2000 recommendation that are not already reflected in the ECHR. The inadequacy of the 2000 recommendation lies not in its content, but in its lack of binding rules, which has led to a disappointing pattern of national failure to comply with the principles set out in the recommendation. The response needed is to convert those aspirations in the 2000 recommendation into concrete obligations, coupled with a practical, rapid and public means of exposing deficiencies in national practice. This can be achieved by including those aspects of the 2000 recommendation in a convention with binding force, coupled with a rapid, simple and effective mechanism for their enforcement.

It is now up to the Committee of Ministers of the Council of Europe to implement the 2018 recommendation but, with the help of the Council of Europe working parties and the technical assistance of the CCBE, the resulting convention would be a further step towards the effective protection of the rule of law. [g](#)



# Sir, yes, sir!

There is no clear test to determine what amounts to a ‘reasonable instruction’, though case law in this area is developing. **Sinead Morgan** asks ‘how high?’

SINEAD MORGAN IS A SENIOR ASSOCIATE IN DWF’S EMPLOYMENT TEAM IN DUBLIN



*Brewster v Burke and the Ministry for Labour* (1985) established the principle that an employee repudiates a contract of service if he “wilfully disobeys the lawful and reasonable instructions of his master”.

That case established that one incident of insubordination can amount to gross misconduct, justifying the dismissal of an employee. Section 6(1) of the *Unfair Dismissals Act 1977* provides protection to employers who dismiss employees when there are substantial grounds justifying the dismissal.

The term ‘insubordination’ reeks of a past era with a master/servant culture, which arguably no longer exists. Having said that, there has been a flurry of activity in this space in the past few years.

Most recently, the cases of *Castolin Eutectic Ireland Limited v Rafal Kita* and *Swissport Ireland v Cakolli* have brought the concept of insubordination into clear focus again.

## ≡ AT A GLANCE

- An employee repudiates a contract of service if he ‘wilfully disobeys the lawful and reasonable instructions of his master’
- One incident of insubordination can amount to gross misconduct, justifying the dismissal of an employee
- Most reasonable instruction cases tend to hinge around employees’ justification for refusing to carry out instructions
- More recently, employees have relied on the defence of penalisation to defend refusals to obey their employers

### Justification for refusal

In most reasonable instruction cases, there is no dispute as to the refusal by an employee to obey an instruction. Instead, cases tend to hinge around employees’ justification for that refusal. For example, *Uniphar Limited v A Worker* involved a refusal by a driver to carry out a particular ‘run’ because delays in loading were extending his working week. The Labour Court rejected the employee’s justification, as the resulting delay was a mere 30 minutes, and found the employee’s refusal to be an “over-reaction and totally unacceptable”.

Similarly, in *An Garda Síochána v A Worker*, a civilian driver



PIC: REX FEATURES

refused to complete his duty as it would have involved overtime. His contract stated that it expected employees to cooperate regarding overtime, but did not compel them to work overtime. In the circumstances, the Labour Court deemed the disciplinary sanction to be fair and reasonable.

In the 2017 case of *Employer v Employee*, an employee was required to undertake garda vetting for his role, which was carried out through a third party to comply with legislative requirements. The employee refused to complete the necessary paperwork. He insisted on being vetted

directly by the gardaí, as he alleged that he had previously been the victim of identity fraud. No evidence was provided to support that allegation. Ultimately, the WRC found that summary dismissal was justified.

#### Employee defences

It can be difficult to understand how an employee could successfully defend his decision to directly disobey his employer. A number of cases have dealt with that issue. In *Zamfir v Lorien Enterprises Limited*, a commis chef refused to obey a supervisor's instruction to clean a

bathroom. A heated discussion ensued, which resulted in the employee being fired. The tribunal found fault on both sides. The style of management applied by the supervisor was a reactive one and there was a lack of HR training. Ultimately, the employee's behaviour was also found to have contributed to the dismissal.

In *A Cabin Steward v An Airline Company*, it was argued by a member of cabin crew that the employer had made a request for him to work an additional duty at the end of his shift, rather than issuing him with an instruction. This argument was rejected by the WRC, which found that the employee's

“THE LABOUR COURT FOUND THAT, WHERE AN EMPLOYEE RAISES A QUESTION AS REGARDS THE LEGALITY OF INSTRUCTIONS, THERE IS A RESPONSIBILITY UPON THAT EMPLOYER TO PROPERLY ESTABLISH THE LEGAL FACTS



refusal to undertake an additional duty was fully understood by the employee, who had telephoned his shop steward to take advice at the time.

In the more recent *Cakolli* case, an airport-based driver was dismissed for his refusal to drive a vehicle that was not taxed or insured. His role required him to drive primarily on airport roads; however, on occasion, he was required to drive on public roads. The employee contacted the gardaí, who confirmed that he needed tax and insurance when driving on public roads.

The employee raised concerns with his employer. The employer made no efforts to investigate the employee's concerns and dismissed him for failure to obey a reasonable instruction.

The Labour Court found that, where an employee raises a question as regards the legality of instructions, there is a responsibility upon that employer to properly establish the legal facts. They found that at no stage was the reasonableness of the instruction evaluated by the employer. On that basis, they found

the dismissal to be unfair and made a substantial award of €50,000 to the employee.

In the *Castolin* case, it was admitted by the employee that he had failed to follow his supervisor's instructions by prioritising a packing list. As a direct result, an order was not ready for shipment and the company lost the order. It was accepted that there had been a failure to follow a reasonable instruction, but the Labour Court had concerns regarding the proportionality of the sanction and fair procedures, resulting in an award being made.

### Penalisation as a defence

More recently, employees have relied on the defence of penalisation to defend refusals to obey their employers. There is a particularly interesting analysis of this defence in *Road Safety Authority v Mr Hegarty and Dyra*. This was an appeal to the Labour Court of a Rights Commissioner's decision in a case involving statutory driver testers. A new technology using 'tablets' was introduced by the company to 'mark' driving time. The company produced evidence that risk assessments had been carried out on the equipment.

The Labour Court then issued a recommendation confirming that the employees should cooperate with the new technology. Despite this recommendation, the drivers refused to use the equipment and some staff were sanctioned. The employee in question sought to rely on [section 27](#) of the *Safety, Health and Welfare at Work Act 2005* as a defence.

The Labour Court found that "an employee's alleged insubordination should be examined fairly and impartially". It confirmed that the respondent took all reasonable steps necessary to ensure, "as

THE TRIBUNAL FOUND IN THE EMPLOYER'S FAVOUR, RELYING ON THE *BREWSTER* CASE AND EXAMINING WHETHER THE INSTRUCTION WAS REASONABLE, WHETHER FAIR PROCEDURES WERE APPLIED, AND THE REASON FOR THE REFUSAL TO FOLLOW THE INSTRUCTION



## THE LABOUR COURT FOUND THAT ‘AN EMPLOYEE’S ALLEGED INSUBORDINATION SHOULD BE EXAMINED FAIRLY AND IMPARTIALLY’

far as reasonably practicable”, the safety of the driver testers. Once the complainants’ concerns had been addressed by the respondent, and an instruction issued to use the tablets, any disciplinary action taken as a result of their refusal to do so was justified. Therefore no penalisation had occurred.

In *HSE Dublin N/E v Annamay Tiernon*, an employee refused to act as a sole operator as an emergency medical technician (EMT). It was not unusual for an EMT to work alone. The Labour Court confirmed that the employee should have worked, but ‘under protest’. Although they found the employee’s behaviour to have been inappropriate, the disciplinary procedures were uncertain, so the employee was awarded compensation.

In *Stobart (IRE) Ireland Services Limited v Keith Carroll*, a driver refused to work because he was extremely tired and had worked excessive hours. He alleged that he was being penalised and relied on section 27(2)(a) of the *Safety, Health and Welfare at Work Act 2005* to defend his actions. In this case, the employer was found to have acted inappropriately, and the claim for penalisation was upheld.

### Guidance

*Cashman v St Patrick’s Hospital Cork* provides useful guidance on the steps an employer should take when disciplining an employee for insubordination. In that case, an employee constantly refused to use the staff car park without justification, contrary to a direct instruction by the employer to all employees. The employee persisted and was suspended with pay, pending a disciplinary hearing. At that hearing he was warned that continued failure could result in disciplinary action, up to and including dismissal. Ultimately the employee was dismissed.

The tribunal found in the employer’s favour. In doing so, they relied on the

*Brewster* case and examined whether the instruction was reasonable, whether fair procedures were applied, and the reason for the refusal to follow the instruction. They found the instruction to park in the staff carpark to be reasonable and that all other staff were complying with this direction.


Late in the process, there was a suggestion that the employee was unfit to walk to the carpark, but medical evidence was not presented to support this argument. Ultimately, the tribunal found that there had been a “persistent failure to obey a lawful and reasonable instruction [that] amounted to a serious sundering of the employment relationship”.

To date, there has been a lack of guidance from the courts regarding the concept of what is a reasonable instruction. *Cakolli* confirms that, if an instruction is clearly illegal, it should justify a refusal to obey. Looking back in time to *Fulham v Currar Knitwear* (1978), the tribunal indicated that a refusal to carry out an instruction would be viewed more seriously if it should have been obvious to the employee that the refusal would have resulted in an adverse consequence to the employers’ business.

In *Cavanagh v Dunnes Stores* (1994), the tribunal focused on both the employer and the employee’s behaviour, and the reality of the situation, in determining the reasonableness of the instruction.

A review of the case law throws up some interesting facts. In the civil courts, judges seem to have taken a stronger stance and offered clearer reasoning for their decisions. Although one instance of insubordination was found to be sufficient to merit a dismissal in the *Brewster* case, many recent cases have only succeeded where there have been multiple instances of insubordination.

Although *Cashman* and *Cavanagh* provide some guidance, there is no clear test to determine what amounts to a reasonable instruction. This area is likely to develop, as employees try to justify their failures to

comply with their employers’ instructions. Legislation such as the *Protected Disclosures Act 2014* is likely to be used as a defence in such cases by employees, given that it offers significant protection for whistle-blowers. 

## LOOK IT UP

### CASES:

- *A Cabin Steward v An Airline Company* [ADJ-0002402/2016]
- *An Garda Síochána v A Worker* [AD921/2009]
- *Brewster v Burke and the Ministry for Labour* [1985 JISLL 98]
- *Cashman v St Patrick’s Hospital Cork* [UD154/2013]
- *Castolin Eutectic Ireland Limited v Rafal Kita* [2017 ILCR UDD1754]
- *Cavanagh v Dunnes Stores* [UD820/1994]
- *Employer v Employee* [ADJ00001385/2016]
- *Fulham v Currar Knitwear* [UD76/1978]
- *HSE Dublin N/E v Annamay Tiernon* [Labour Court HSD088/2008]
- *Road Safety Authority v Mr Hegarty and Dyra* [HSD/42/2014]
- *Stobart (IRE) Ireland Services Limited v Keith Carroll* [2013] IEHC 581
- *Swissport Ireland v Cakolli* [2017 UDD2759]
- *Uniphar Limited v A Worker* [ADJ-0658/2006]
- *Zamfir v Lorien Enterprises Limited t/a LT&Z* [UD917/2013]

### LEGISLATION:

- *Protected Disclosures Act 2014*
- *Safety, Health and Welfare at Work Act 2005*
- *Unfair Dismissals Act 1977*





# The happy lawyer

According to a recent article published by the American Bar Association, many lawyers regret their career choice. **Ho Wei Sim** looks at the evidence and suggests some things that lawyers and firms can do about it

HO WEI SIM IS A BANKING PROFESSIONAL SUPPORT LAWYER WITH DILLON EUSTACE AND IS AN ACCREDITED PSYCHOTHERAPIST



A friend rang me the other day to ask if I would speak to her daughter who was applying to college and was interested in doing law. She asked if I would recommend it as a career.

Unfortunately, the answer to that is less than equivocal. According to a recent article published by the American Bar Association (ABA): “Many attorneys admit to the ultimate regret in choosing a career – they’re sorry they became lawyers. For each of them, it’s a personal tragedy. When such sentiments pervade an entire profession, it’s a societal disaster.”

Of course, there are unhappy people in every profession, and lawyers are not the exception. However, it is sobering to look at the statistics measuring just how unhappy lawyers are. The often-cited Johns Hopkins University study of more than 100 occupations found that lawyers top the list for the incidence of major depression. Researchers found that lawyers are 3.6 times more likely to suffer from depression than the average person.

According to the ABA:

- The rate of suicide among lawyers is higher than among all other occupations – the National Institute

of Safety and Health in the US found that male lawyers aged 20-64 are more than twice as likely to die from suicide than men in other occupations,

- As many as a quarter of lawyers suffer from psychological distress, including anxiety, social alienation, isolation, and depression,
- The rate of substance abuse among lawyers is double that of the US national average, and
- 15-20% of all US lawyers suffer from alcoholism or substance abuse.

## AT A GLANCE

- It is very sobering to look at the statistics measuring just how unhappy lawyers are
- The things that lawyers think will make them happy in the profession are the opposite of what actually does lead to lawyers’ well-being
- The solution begins with the firm and what it can do differently, and also with lawyers’ personal willingness to explore alternative ways of doing things

Moreover, 70% of lawyers responding to a Californian lawyers’ magazine poll said that they would change careers if the opportunity arose.

### Desperately seeking Susan

Take Susan (not her real name), for example, a senior associate in the banking department of a leading firm. She is on the last lap leading up to closing a high-profile acquisition finance deal and has been working till 11pm on most nights for the last few weeks. She has just learned that closing will be delayed due to a last-minute issue.



IT IS IMPORTANT TO SEEK MEANING IN WHAT WE DO – THAT IT ADDS VALUE TO OUR CLIENTS AND TO THE WORLD



“I’ve been working all out, and just about holding myself together till closing. And now I still have to keep going.” And that’s a common scenario: associates working at high intensity find themselves having to keep pushing themselves past breaking point. And there is no rest – after this deal closes, it’s on to the next one, and yet another closing.

Most nights, Susan gets home after her three-year-old is in bed. There’s hardly any time to talk to her husband, as all she wants to do is to fall into bed. Even during holidays, she is on conference calls and dictating memos and drafting clauses in contracts. “I’m burnt out. I wish I could change jobs, but I don’t know if any other legal job would be better. Plus, I don’t even have time to look around or do up my CV.”

Susan feels she can’t take a pay cut, with a hefty mortgage over her home in south Dublin. She’s holding out for the bonus in a few months, and thinks she is on the cusp

of making partner soon. “Maybe things will be better next year,” she’s been thinking, but a year has turned into five years. Time goes quickly. “How did I get here?” she wonders.

This unhappiness can be ascribed to what one internet commentator calls ‘the expectations/reality gap’. Susan signed up for law school as she was not clear what else she wanted to do. She was told that the law degree was very flexible but has not found this to be the case. Many lawyers stumble into the profession by default. Many are not suited for the job. Being a lawyer is seen as prestigious and exciting, working in court in trials, with dramatic perceptions fuelled by television and film. The reality is that a large part of the work can be boring (to some or many) – reading and rereading dense contractual documents and cases, drafting documents, working with demanding clients where there are high stakes, considerable conflict, and long hours. “Often, I am

arguing with the other side on a point that is important from a legal perspective, but my client doesn’t even particularly care about.” Susan doesn’t find her work meaningful. But she feels trapped and helpless, as if she has lost control over her own life.

### Hey Joe

Then there is Joe, who was recently made a junior partner. Again, there was disappointment. “I thought when I finally made partner, life would get much better. But there’s no let-up – now there’s more personally at stake as a partner, and fresh pressure and competition to bring in work. And I’m finding I’m not hugely better off financially.” The equity structure in his firm is such that much of the rewards and the power to make decisions are still in the hands of senior partners. “I’ve made many suggestions about things we can do better, but I don’t feel it makes any difference: the partners are very slow when it comes to change.” When I wondered if the environment was one where he felt respected, and where he felt valued and where he could thrive and develop, he paused, thoughtfully.

### Paul Revere

And then there is Paul, a sole proprietor, who has been finding it hard to keep his business above water. He feels he needs to be able to provide for his wife and their children in the manner that they have been used to. She is no longer working outside the home. There is an expectation that their lifestyle, with a second home in Spain and private schools, must go on.

His business was badly hit in the financial crisis, and he is still dealing with its legacy, along with all the challenges of running a sole proprietorship. He feels desperate, but doesn’t know how to tell his wife that the pressures of work are getting to him. He feels isolated, as they have drifted apart with the long hours he is putting in to keep things going. The strain of keeping up the appearance that all is well is taking its toll on him, and he finds himself drinking more.

The lawyers in the examples above suffer from ‘low decision latitude’, feeling trapped and powerless in a situation of high pressure and stress from which they have no escape. In a way, a lawyer’s unhappiness is unique,



## IDENTIFYING THAT YOU STILL HAVE A CHOICE CAN MAKE YOU FEEL LESS TRAPPED AND MORE WILLING AND HAPPIER TO REMAIN A LAWYER. YOUR EXPLORATION IS AN ACT OF SELF-CARE. SOMETIMES THAT IS ALL YOU NEED

because it reflects the typical personality traits of our profession. Many of us are perfectionists, high achievers, hard-working, highly driven individuals who push ourselves beyond all tolerable limits. It is our job to be pessimistic and see the worst-case scenario in situations. Might it be said that what makes us good lawyers makes us unhappy human beings?

### Satisfaction

According to a [study of lawyer satisfaction](#) by Krieger and Sheldon, the things that lawyers think will make them happy long-term in the profession (for example, money, prestige, making partner) are exactly the opposite of what actually does lead to lawyers' well-being and has no statistical correlation with happiness. Other data show that mental-health issues increase as the lawyer becomes more successful – in direct contrast with other professions where, the more successful one is, the less likely one is to experience mental-health issues. This is a tragedy for the legal profession and for lawyers and their families.

The solution begins with the firm and what it can do differently.

The Kieger-Sheldon study suggests that long-term well-being is most strongly

correlated with the level of autonomy, mastery, and relatedness lawyers feel they possess in their work environment. But legal work is becoming increasingly specialised. Junior associates often handle a small part of a much larger deal and may feel they have very little influence over the work, and minimal control over their time. Restoring a sense of autonomy to the individual would reduce this stress. Junior partners need to feel a sense of inclusion and belonging in the broader partnership of the firm. An associate's self-confidence can be enhanced by training and positive feedback. When there is 'psychological safety' in the work environment, the lawyer feels accepted and can trust it is safe to express his opinions, to take risks, and can discuss errors and speak about potential or actual problems.

On a personal level, what can a lawyer do to be happier? The answer isn't about 'work/life' balance or exercising more. Putting aside more time for friends and family and activities helps, of course, and exercising more will lead to healthier and more attractive lawyers (at least one hopes!). But the question warrants a deeper exploration.

For all those lawyers who are unhappy and wish they were doing something

different, perhaps it might be a good idea to give yourself permission to explore the possibility of switching careers. The very act of giving yourself the choice is an acknowledgement that the more vulnerable part of yourself is hurting and that you are unhappy. Identifying that you still have a choice can make you feel less trapped and more willing and happier to remain a lawyer. Your exploration is an act of self-care. Sometimes that is all you need, and a complete switch away from law will not be necessary. Perhaps a change to a different type of law (for example, general practice rather than corporate law) or a different context (such as in-house rather than private practice) is what is required. Lawyers are immensely talented people working in what may be extremely limited jobs – our risk-averse nature may hold us back from discovering an alternative path.

### The seeker

It is important to seek meaning in what we do – that what we do adds value to our clients and to the world, if possible. We may not be saving the world but, if we are satisfied that what we do does some good, the difficulties we encounter feel worthwhile. And then, no matter what our discomforts, we might see our job as a structure within which we have the opportunity to relate to people and interact with the world.

Many lawyers who are suffering do not seek help. They may believe that they can manage on their own. They may be afraid that seeking help would negatively affect their personal reputation. However, it is important to recognise when we are in pain, and extend to ourselves the kindness and compassion that we might readily extend to others; to have faith that we have the power to change things, and that relief can be found.

## Q FOCAL POINT

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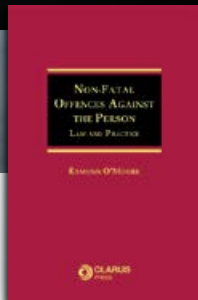
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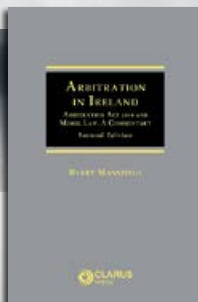
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BOOKS



## THE ROLE OF CIRCUIT COURTS IN THE FORMATION OF UNITED STATES LAW IN THE EARLY REPUBLIC

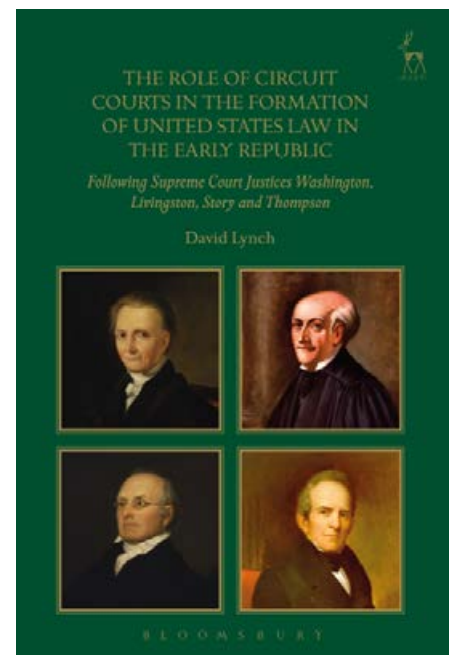
**David Lynch.** Hart Publishing (2018), [www.bloomsburyprofessional.com](http://www.bloomsburyprofessional.com).  
Price: Stg£68.04 (online price, incl VAT).

This short volume is a primer in US legal history, telling the story of the evolution of the Supreme Court and its influence in American life. It provides a unique insight into the political system in the US and how the Supreme Court assumed – against the odds – its rightful position as the third pillar of Government.

Four judges, Washington, Story, Livingston and Thompson, none of whom are well-known outside the USA, have been selected for study by the author. The book traces their efforts to establish a uniform system of jurisprudence throughout the USA, in a young country where central government was often deeply distrusted.

All were judges of the Supreme Court and required to go on Circuit – ‘riding the Circuit’, literally, as the period of study selected is from 1800 to 1835 and contemporary American infrastructure was pretty basic, and thus no picnic. But the Circuits dealt with many thousands of cases, compared with a relative handful in the Supreme Court, and so were much more influential. The best judgments became uniformly accepted, gradually the balance shifted, *stare decisis* got a grip, and the Supreme Court evolved into the powerful and influential body it now is.

Cases included commercial, contract and constitutional law, disputes over ‘prizes’ (particularly prevalent during the 1812 war with England), slavery, and Indian land rights. Judges would exchange letters – often summarised in the book – to help one



another with tricky points.

Irish readers will learn little of real practical value from this erudite and entertaining book, but as a guide to a critical period of US history, legal as well as economic and political, and to help in understanding how the fledgling state across the Atlantic has evolved, it is compulsory reading.

*Dara Robinson is a partner in the Dublin law firm Sheehan & Partners and is a vice-chair of the Law Society's Regulation of Practice Committee.*

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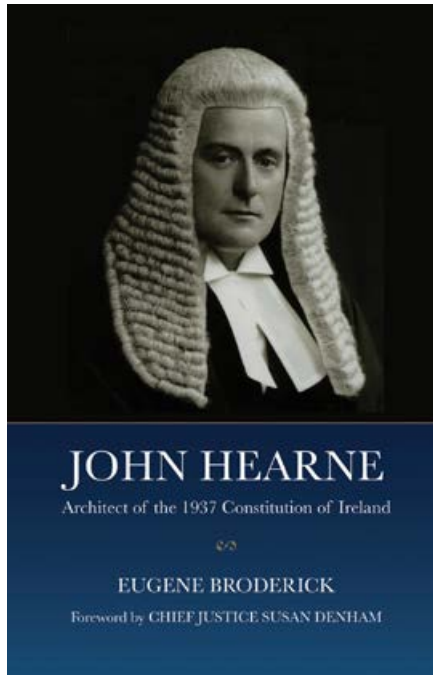
# JOHN HEARNE: ARCHITECT OF THE 1937 CONSTITUTION OF IRELAND

**Eugene Broderick.** Irish Academic Press (2017), [www.irishacademicpress.ie](http://www.irishacademicpress.ie). Price: €29.99.

This is a superb story of the life of John Hearne (1893-1967) as a lawyer and one of the chief drafters of the Constitution of 1937. This is the story of a man who studied for the priesthood in Maynooth College but who left in his seventh year of clerical study (the reference to the social stigma of the 'spoiled priest' phenomenon is unknown to many today). This is also the life story of a barrister who, as a mature student, won all the prizes at his law examinations; the story of a Redmondite Home Ruler (the anti-violence constitutionalist); and of a man who became a civil servant in the legal service of the State who worked as a legal adviser in the Department of External Affairs and was chosen by Éamon de Valera to take a leading role in the drafting of the Constitution of 1937.

There are wonderful gems in the book, which is written with an appealing style. There is the boast of Colum Gavan Duffy (solicitor and former librarian of the Law Society), that his father George Gavan Duffy (signatory to the 1921 Treaty and a former president of the High Court) was responsible for the drafting of the seminal article 40.3 (the guarantee of personal rights of the citizen). This boast is regarded as overstated. There is a consideration of the intemperate remarks of Éamon de Valera in the Dáil when the same Gavan Duffy held, in one of the first judicial review cases involving the *Offences Against the State Act (Burke, 1940)*, that the legislation was unconstitutional, which resulted in the release of many prisoners. De Valera said initially in the Dáil after *Burke* that "if the legislature and the judiciary are going to be at loggerheads ... we shall have to change the situation ... because it means bringing everything here into confusion" (January 1940).

There is an excellent description of the opposition of the Department of Justice and Finance to de Valera's own concept of judicial review. It was considered that many efforts would be made to challenge legislation in the courts – having the Supreme Court as a



watch-dog over the Dáil and Government, the courts assuming a position in civic life to which they are not entitled and with references to "irresponsible judges".

The author, Eugene Broderick, is a historian based in Waterford. Former Chief Justice Susan Denham, in her foreword, notes that the book elegantly captures the commitment of Hearne to the protection of the rights of Irish citizens.

The author has written an impressive book, a significant contribution to our knowledge regarding the drafting of a document that influences our lives on a daily basis. [G](#)

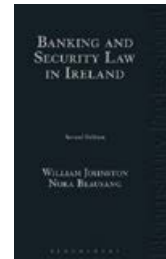
*Dr Eamonn G Hall is a notary public and director of the Institute of Notarial Studies.*

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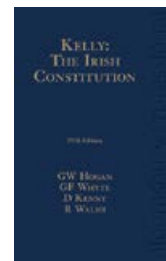
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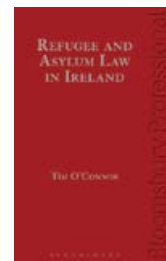
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# WHEN THE CHIPS ARE DOWN

The European Commission has fined Qualcomm nearly €1 billion for abusing its dominant position in the sale of baseband chipsets.

**Cormac Little** orders a single

CORMAC LITTLE IS HEAD OF THE COMPETITION AND REGULATION UNIT AT WILLIAM FRY, SOLICITORS

SUCH REBATES MEAN THAT CUSTOMERS WILL NOT SOURCE PRODUCTS FROM ALTERNATIVE SUPPLIERS, MAKING IT DIFFICULT FOR RIVALS TO ENTER THE MARKET, EVEN IF THEIR RESPECTIVE PRODUCTS ARE BETTER AND/OR LESS EXPENSIVE

Last January, the European Commission found that Qualcomm had abused its dominant position within the meaning of article 102 of the *Treaty on the Functioning of the European Union* (TFEU). The illegal conduct involved Qualcomm restricting competition for the sale of baseband chipsets (BCs) by making significant payments to a key customer, Apple, on condition that the latter would not source BCs from rival manufacturers. BCs are an essential component allowing smartphones and tablet computers to connect to mobile telephony or cellular networks. They are used for both voice and data transmission. One type of BC – a long-term evolution (or LTE) BC – complies with the 4G standard. Qualcomm is by far the world's largest supplier of LTE BCs.

The commission fined Qualcomm just shy of €1 billion and ordered it to desist from the relevant behaviour in the future. In the wake of previous commission infringement findings against Microsoft, Google and Intel, January's decision represents yet another significant fine imposed on a US-headquartered technology giant for abusing its dominant position.

#### The definite article

Article 102 TFEU prevents the abuse of a dominant position in the EU (or in a substantial part of it) that affects trade between



EU member states. By contrast, article 101 prevents anticompetitive arrangements between two or more separate undertakings that affect trade between EU member states. Accordingly, in order to establish that an undertaking has infringed article 102, the commission must first establish that this entity has a dominant position.

A dominant position is defined as a position of economic strength that allows an undertaking to hinder effective competition being maintained in the relevant market by allowing it to behave, to an appreciable extent, independently of its competitors, customers and, ultimately, consumers. Dominance *per se* is not illegal, but dominant undertakings are under a special responsibility not to hinder effective competition. Article 102 TFEU contains a non-exhaustive list of various types of abusive conduct. These include limiting technical development to the ultimate

prejudice of consumers. A dominant company may argue that its behaviour is objectively justified and, accordingly, does not infringe article 102.

#### Commission investigation

DG Competition opened its investigation into Qualcomm's alleged anti-competitive activity in July 2015. In December of the same year, Qualcomm was issued with a *statement of objections* (SO) containing the commission's abuse of dominance concerns arising from a series of payments to Apple. At the same time, the commission issued a separate SO, alleging that Qualcomm had engaged in predatory pricing.

In 2011, Qualcomm reached a formal agreement to pay significant rebates to Apple on the condition that the latter would exclusively use Qualcomm-manufactured BCs in both its iPad and iPhone products. In 2013, Qualcomm and Apple extended their agreement until the end of 2016. Needless to say, given its status as one of the world's best-known manufacturers of smartphones and tablets, Apple is a key customer of BCs and, thus, an important business target of Qualcomm's rival manufacturers, including Intel.

The agreement under investigation stipulated that, if Apple ever launched a smartphone/tablet containing a BC supplied by a rival manufacturer, the pay-



PIC: SHUTTERSTOCK

ments from Qualcomm would cease. In addition, for the bulk of the time the relevant contract was in place, if Apple decided to procure BCs from another supplier, it would have to reimburse a large portion of payments already received to Qualcomm.

The commission argued that the upshot of these provisions was competitor foreclosure. In other words, rival manufacturers of BCs were prevented from competing for Apple's business. Moreover, the commission also

considered that not having a prestigious name like Apple on their list of customers adversely affected the chances of Qualcomm's competitors from selling their respective BCs to other smartphone/tablet manufacturers.

Internal Apple documents showed that, from time to time, it had given serious consideration to purchasing some of its BC requirements from Intel. However, the exclusivity with Qualcomm nixed that idea.

Interestingly, Apple began to purchase BCs from Intel three months before the expiry of its agreement with Qualcomm. The iPhone maker obviously felt that the benefits of dealing with Intel outweighed forgoing the rebate payments from Qualcomm.

#### **Qualcomm's dominance**

The commission found that, for the period between 2011 and 2016, Qualcomm held over 90% of the global market for LTE BCs. This market is also charac-

THE QUALCOMM  
DECISION  
EMPHASISES  
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TO UNDERMINE  
COMPETITION





THE COMMISSION CONSIDERED THAT COMPETITION SUFFERED DUE TO VARIOUS FACTORS, SUCH AS THE EXTENT OF QUALCOMM'S MARKET SHARE, THE REDUCED OPPORTUNITY FOR SMALLER BC MANUFACTURERS TO ENHANCE THEIR RESPECTIVE REPUTATIONS BY SUPPLYING APPLE, ALLIED WITH THE SIGNIFICANT AMOUNTS OF MONEY – REPUTEDLY BILLIONS OF US DOLLARS – PAID BY QUALCOMM TO APPLE

terised by high barriers to entry, including a significant research-and-development spend necessary to develop an LTE BC, allied with a series of intellectual property rights held by Qualcomm. DG Competition therefore concluded that Qualcomm held a dominant position in the global market for LTE BCs over the period under investigation.

The commission found that Qualcomm's payments to Apple – made on the proviso that the latter exclusively use the former's BCs in its products – prevented rival manufacturers from competing. Relying on both qualitative and quantitative evidence, the commission considered that competition suffered due to various factors, such as the extent of Qualcomm's market share, the reduced opportunity for smaller BC manufacturers to enhance their respective reputations by supplying Apple, allied with the significant amounts of money – reputedly billions of US dollars – paid by Qualcomm to Apple. Moreover, DG Competition emphasised Apple's importance as a customer, given that it accounts for around one-third of global LTE BC demand.

Qualcomm sought to justify its arrangements with Apple on the basis of the 'as-efficient competitor' (AEC) test. This test is outlined in the 2009 guidance on the commission's enforcement priorities in applying article 102. In the guidance, the commission stipulates that it will normally only intervene where the behaviour under investigation has already been, or is capable of, hampering competition from competitors that are considered to be as efficient as the dominant company.

The AEC test is a quantitative calculation to establish whether competitors who are similarly efficient as a dominant com-

pany could profitably match the latter's payments or rebates. If such competitors could do so, then, in principle, the dominant company's rebates would not be abusive, since they are unlikely to have a negative impact on competition. Using a 'price-cost' test, Qualcomm argued that if the price of a BC exceeds a certain measure of cost, then an 'as-efficient' competitor that makes products of an equal standard could compete.

The commission rejected this argument, however, concluding that the results of this test failed to support Qualcomm's arguments that its payments to Apple were incapable of having an anti-competitive impact. In addition, Qualcomm failed to show that its conduct was objectively justified on the basis of efficiencies.

The commission therefore concluded that, by excluding rival BC manufacturers from, at least, a significant chunk of the market, Qualcomm's payments to Apple had an anti-competitive impact, while ultimately harming consumer welfare.

#### The fine and broader impact

The commission's fine of €997 million takes into account the duration and gravity of the infringement and is based on the value of Qualcomm's direct and indirect sales of LTE BCs in the European Economic Area. This sum represents 4.9% of Qualcomm's 2017 global turnover.

The commission's decision to fine Qualcomm should also be viewed in the context of the overall enforcement of article 102. Indeed, the Qualcomm case shares many similarities with the commission's 2009 decision to fine Intel over €1 billion for a series of conditional rebates to computer manufacturers. It is, of course, a remarkable irony that Intel finds itself to be both

perpetrator and victim of the same type of anti-competitive practice. While Intel's challenge to the commission's decision was rejected by the EU's General Court, in its September 2017 appeal ruling, the Court of Justice of the EU (CJEU) found that the lower court's ruling contained errors of law, since it held that it was unnecessary to deal with Intel's arguments that the AEC test had been applied incorrectly (see also the [November 2017 Gazette](#), p66).

While the Qualcomm investigation was long underway by the time of the CJEU's judgment in the Intel case, it must have been an important factor in the commission's thinking. Unlike Intel, where the relevant payments were found by their very nature to be anti-competitive, DG Competition appears to have examined the entire range of Qualcomm's arguments, including the AEC test. In other words, DG Competition considered whether the relevant payments to Apple could foreclose competitors that were, at least, as efficient as Qualcomm.

It is noteworthy that Apple's conduct did not itself come under scrutiny. It is a major, well-resourced company in its own right and is, therefore, likely to have had sufficient countervailing power not to acquiesce to Qualcomm's proposals. Moreover, it directly benefitted from the valuable rebates. Accordingly, given that Apple arguably enabled Qualcomm's behaviour, it is noteworthy that the commission did not open an investigation under [article 101 TFEU](#) into the conduct of both companies. DG Competition may have felt that it had a better chance of success under article 102, given its record of, for the most part, successfully defending appeals to its abuse of dominance findings,



particularly against major US technology companies.

It is obviously a common practice in the business world for companies to recognise customer loyalty by granting rebates or by making other financial payments. For non-dominant companies, such rewards do not give rise to competition concerns. However, the Qualcomm decision emphasises the special responsibility of dominant companies not to undermine competition. On the one hand, loyalty payments are, in essence, price reductions. However, on the other hand, they represent the price a dominant company is willing to pay to maintain exclusivity. In turn, such rebates mean that customers will not source products from alternative suppliers, making it

difficult for rivals to enter the market, even if their respective products are better and/or less expensive. Ultimately, consumers suffer, as they must potentially endure inferior products at a higher price.

The commission's findings on the foreclosure effects of the Qualcomm/Apple contract are arguably supported by the fact that the latter began to purchase significant quantities of Intel's LTE BCs in the final months of 2016. Indeed, Apple apparently procured half of its annual requirement of LTE BCs from Intel last year.

On learning of the commission's infringement decision, Qualcomm quickly announced its decision to appeal to the General Court. It is likely to chal-

lenge various aspects of the commission's decision, including the fine. In this regard, it is perhaps surprising that, notwithstanding the fact that article 102 infringements are typically seen to be less harmful to competition than cartels, Qualcomm was nonetheless fined nearly 5% of its most recent worldwide turnover (the overall cap is 10%.) While there appears to be an absence of aggravating factors, such as recidivism or obstructing the investigation, the fact that the infringement lasted five years, six months, and 23 days was undoubtedly a significant factor. The suitability of this fine, coupled with the commission's substantive findings, are both likely to be closely examined by the General Court. [G](#)

**DOMINANCE  
PER SE IS NOT  
ILLEGAL, BUT  
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UNDERTAKINGS  
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COMPETITION**

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# 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 Kathleen Doocey, a solicitor practising as KM Doocey Solicitors, American Street, Belmullet, Co Mayo, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT71 and High Court record 2018 no 26 SA]**

*Law Society of Ireland (applicant)*

*Kathleen Doocey (respondent solicitor)*

On 13 February 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2016 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

As the respondent solicitor had not filed her report in advance of the hearing date, the tribunal directed the Society to bring their recommendation forward to the High Court that the respondent solicitor be suspended from practice until such time as she was fully compliant with her obligations under the *Solicitors Accounts Regulations*. The solicitor's report was filed in advance of the High Court hearing date.

On 16 April 2018, the High Court ordered that:

- 1) The respondent solicitor be censured,
- 2) The respondent solicitor pay a sum of €1,000 to the compensation fund,
- 3) The respondent solicitor pay a sum of €687 as a contribution towards the costs of the of the Law Society before the disciplinary tribunal,

- 4) The respondent solicitor pay measured costs of the Law Society in respect of the High Court application in the sum of €929 within three weeks from the date of the order.

**In the matter of Oisín Nolan, a solicitor practising as Oisín Nolan at 15A Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT77 and High Court record 2018 no 27 SA]**

*Law Society of Ireland (applicant)*

*Oisín Nolan (respondent solicitor)*

On 13 February 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

As the respondent solicitor had not filed his report in advance of the hearing date, the tribunal directed the Society to bring their recommendations forward to the President of the High Court that the respondent solicitor be suspended from practice until such time as he was fully compliant with his obligations under the *Solicitors Accounts Regulations*. The respondent solicitor's report was filed in advance of the High Court hearing date.

On 16 April 2018, the High Court ordered that:

- 1) The respondent solicitor pay a sum of €500 to the compensation fund,

- 2) The respondent solicitor pay a sum of €837 towards the costs of the of the Law Society before the disciplinary tribunal,

- 3) The respondent solicitor pay measured costs of the Law Society of Ireland in respect of the High Court application in the sum of €929 within three months from that date.

**In the matter of James V Dockry, a solicitor practising as Dockry Solicitors at 17 Inns Court, Winetavern Street, Dublin 8, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT97]**

*Law Society of Ireland (applicant)*

*James Dockry (respondent solicitor)*

On 28 March 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 28 February 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €2,000 to the compensation fund,
- 3) Pay a sum of €762 as a contribution towards the costs of the Law Society of Ireland.

**In the matter of Edward A (Eamonn) Kelly, a solicitor formerly practising as principal of Eamonn Kelly Solicitors, Iveragh Road, Killorglin, Co Kerry, and in the matter of an application by the**

**Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [5754/DT128/15; 5754/DT129/15; 5754/DT130/15; 5754/DT131/15; 5754/DT132/15; 5754/DT133/15; 5754/DT134/15; 5754/DT135/15; 5754/DT136/15; 5754/DT166/15; 5754/DT167/15; and 5754/DT168/15]**

*Law Society of Ireland (applicant)*

*Edward A (Eamonn) Kelly (respondent solicitor)*

On 9 December 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

## 5754/DT128/15

- 1) Failed to comply with part or all of an undertaking dated 12 May 2006 to the complainant in relation to a certain property in a timely manner or at all, and/or
- 2) Failed to comply with part or all of an undertaking dated 28 September 2009 to the complainant in relation to a certain property in a timely manner or at all, and/or
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 15 May 2006, 13 November 2006, 12 November 2008, 29 January 2010, 14 March 2011, 12 May 2011, 14 November 2011, 17 August 2012, 6 September 2012 and/or 4 March 2013, and/or
- 4) Failed to respond adequately or at all to some or all of the



- correspondence sent to him by the Society, including letters dated 1 October 2009, 30 March 2010, 29 March 2012, and/or 5 July 2013, and/or
- 5) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 16 October 2013, 19 November 2013, 4 December 2013, and/or 31 January 2014, and/or
  - 6) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society including letters dated 16 October 2013, 19 November 2013, 11 April 2014, 22 May 2014, 3 June 2014 and/or 16 June 2014, and/or
  - 7) Failed to attend at a meeting of the committee on 28 November 2013 in respect of both complaints when required to do so, and/or
  - 8) Failed to attend at a meeting of the committee on 28 January 2014 in respect of the first complaint when required to do so, and/or
  - 9) Failed to attend at a meeting of the committee on 10 June 2014 in respect of the second complaint when required to do so, and/or
  - 10) Failed to comply with the directions of the committee dated 28 November 2013.

#### 5754/DT129/15

- 1) Failed to complete registration of the property in question, and/or
- 2) Failed to comply with the direction of the committee made at its meeting on 16 September 2014 to hand over any files or documents of his former client, Mrs Vera Coughlan, to her or her nominated solicitor within four weeks, and/or
- 3) Failed to comply with the direction of the committee made at

- its meeting on 16 September 2014 to refund all moneys paid by his former client within four weeks, and/or
- 4) Failed to attend at the committee meeting that took place on 28 October 2014 when required to do so, and/or
  - 5) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including correspondence dated 7 August 2014 and/or 1 September 2014 and/or 22 September 2014.

#### 5754/DT130/15

- 1) Failed to comply with the direction of the committee made at its meeting on 16 September 2014 to refund his entire fee to the complainants, as well as any undispersed outlay in relation to their registration as owners of a certain property,
- 2) Failed to attend a meeting of the committee on 16 September 2014 when required to do so,
- 3) Failed to attend a meeting of the committee on 28 October 2014 when required to do so,
- 4) Failed to respond to correspondence sent to him by the Society, particularly letters dated 4 December 2013 and 14 May 2014,
- 5) By his conduct, caused acute distress and anxiety to his clients, thus bringing the profession into disrepute.

#### 5754/DT131/15

- 1) Failed to refund an amount of €888.82 to the complainant in a timely manner or at all, and/or
- 2) Failed to attend at a committee meeting that took place on 28 October 2014 when required to do so, and/or
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, and/or
- 4) Failed to respond adequately or

- at all to some or all of the correspondence sent to him by the Society, including correspondence dated 29 August 2014 and/or 23 September 2014.

#### 5754/DT132/15

- 1) Failed to comply with part or all of the undertaking to the complainant dated 15 August 2008 in a timely manner or at all, and/or
- 2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, particularly letters dated March 2012, 21 December 2012, 12 June 2013, and/or 22 July 2013, and/or
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, particularly letters dated 16 October 2013 and/or 4 December 2013, and/or
- 4) Failed to attend at a meeting of the committee on 28 November 2013 and/or 28 January 2014 when required to do so, and/or
- 5) Failed to comply with the directions of the committee dated 28 November 2013.

#### 5754/DT133/15

- 1) Failed to comply with part or all of the undertaking to the complainant dated 3 June 2005 in a timely manner or at all, and/or
- 2) Failed to discharge the sum of €750 in a timely manner or at all to the Society, which said sum was directed by the Society on 22 October 2013 to be paid as a contribution for the Society's costs, and/or
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 2 August 2011, 8 March 2012, 17 April 2012, 21 May 2012, and/or 2 August 2012, and/or

- 4) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 3 July 2013, 31 July 2013, 16 August 2013, and/or 30 October 2013, and/or
- 5) Failed to attend at a meeting of the committee on 28 November 2013 and/or 28 January 2014 when required to do so, and/or
- 6) Failed to comply with the directions of the committee dated 22 October 2013, and/or
- 7) Failed to comply with the directions of the committee, dated 28 November 2013.

#### 5754/DT134/15

- 1) Failed to comply with part or all of the undertaking dated 30 March 2006 to the complainant in respect of a property in Co Kerry in a timely manner or at all,
- 2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 11 June 2009, 10 September 2009, 10 December 2009, 23 February 2010, 8 May 2010, 25 April 2013, and/or 24 June 2013, and/or
- 3) Failed to respond adequately in a timely manner or at all to some or all of the correspondence sent to him by the Society, including letters dated 30 September 2010, 16 November 2010, 4 March 2011, 12 August 2013, 29 August 2013, 4 December 2013, and/or 31 January 2014, and/or
- 4) Failed to attend at a meeting of the committee on 28 November 2013 when required to do so, and/or
- 5) Failed to comply with the directions of the committee dated 28 November 2013, and/or



- 6) Failed to attend at a meeting of the committee on 28 January 2014 when required to do so.

#### 5754/DT135/15

- 1) Failed to comply with part or all of an undertaking to the complainant dated 31 July 2008 in a timely manner or at all, and/or
- 2) Failed to comply with part or all of an undertaking to the complainant dated 8 December 2008 in a timely manner or at all, and/or,
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including correspondence dated 22 May 2013, and/or 10 June 2013, and/or 27 June 2013, and/or 2 August 2013, and/or 13 December 2013, and/or,
- 4) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including correspondence dated 16 January 2009, and/or 17 December 2009, and/or 30 June 2010, and/or 18 August 2010, and/or 16 February 2011, and/or 28 July 2011, and/or 30 April 2012, and/or 25 April 2013, and/or,
- 5) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including correspondence dated 18 June 2013, and/or 23 July 2013, and/or 19 August 2013, and/or 10 September 2013, and/or,
- 6) Failed to attend meetings of the committee in respect of the first complaint on 23 October 2013 and 28 January 2014 when required to do so, and/or,
- 7) Failed to attend at a meeting of the committee in respect of the second complaint on 15 October 2013 when required to do so,
- 8) Failed to comply with the directions of the committee made on

28 November 2013 in respect of the first complaint in a timely manner or at all, and/or,

- 9) Failed to comply with the directions of the committee dated 3 September 2013 in respect of the second complaint in a timely manner or at all.

#### 5754/DT136/15

- 1) Failed to comply with part or all of the undertaking to the complainant dated 30 July 2009 in a timely manner or at all, and/or
- 2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 22 March 2012, 22 October 2012, 22 July 2013, and/or 16 August 2013,
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 15 and 29 October 2013, 20 November 2013, and/or 31 January 2014, and/or
- 4) Failed to attend at a meeting of the committee on 28 January 2014 and/or 11 March 2014 when required to do so, and/or
- 5) Failed to comply with the directions of the committee dated 28 January 2014.

#### 5754/DT166/15

- 1) Failed to comply with part or all of the undertaking dated 17 May 2006 to the complainant in relation to a property in Co Kerry in a timely manner or at all, and/or
- 2) Failed to comply, up to the date of referral to the tribunal, with part or all of the undertaking dated 12 August 2009 to the complainant in relation to a property in Co Kerry in a timely manner or at all, and/or
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 30 May 2007, 28

November 2007, 28 May 2008, 10 July 2009, 31 July 2009, and/or 23 February 2010, and/or

- 4) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 15 October 2012, 17 September 2012, 17 July 2012, and/or 6 December 2010.

#### 5754/DT167/15

- 1) Failed to comply with a direction of the committee made on 29 April 2014 to furnish confirmation with regard to each fee note issued by the complainant as to whether he had received payment from his client, and/or
- 2) Failed to comply with a direction of the committee made on 29 April 2014 to confirm, where and if payment had not been received from his client, that he had submitted fee notes to his respective clients for payment,
- 3) Failed to comply with a direction of the committee made on 29 April 2014 to furnish a copy of his ledger cards, and/or
- 4) Failed to pay €250 levied on him by the committee on 11 March 2014 in a timely manner or at all, and/or
- 5) Failed to attend at a meeting of the committee held on 29 April 2014 when required to so attend, and/or
- 6) Failed to attend at a meeting of the committee held on 10 June 2014 when required to so attend, and/or
- 7) Failed to respond to one or more of the letters sent to him by the Society, dated 7 January 2014, 29 January 2014, 25 February 2014, 14 March 2014, and/or 30 April 2014.

#### 5754/DT168/15

Failed to comply with:

- 1) An undertaking dated 10 July 2007 in respect of a named client and in relation to a prop-

erty situated in Co Kerry,

- 2) Undertaking dated 16 September 2003 in respect of a named client and in relation to a property situated in Co Kerry,
- 3) Undertaking dated 8 November 2007 in respect of a named client and in relation to a property situated in Co Kerry,
- 4) Undertaking dated 15 September 2008 in respect of a named client and in relation to a property situated in Co Kerry,
- 5) Undertaking dated 9 January 2009 in respect of a named client and in relation to a property situated in Co Kerry,
- 6) Undertaking dated 20 February 2001 in respect of a named client and in relation to a property situated in Co Kerry,
- 7) Undertaking dated 26 October 2007 in respect of a named client and in relation to a property situated in Co Kerry,
- 8) Undertaking dated 31 July 2008 in respect of a named client and in relation to a property situated in Co Kerry,
- 9) Undertaking dated 6 June 2010 in respect of a named client and in relation to a property situated in Co Kerry,
- 10) Undertaking dated 29 July 2008 in respect of a named client and in relation to a property situated in Co Kerry,
- 11) Undertaking dated 31 August 2006 in respect of a named client and in relation to a property situated in Co Kerry,
- 12) Undertaking dated 16 June 2005 in respect of a named client and in relation to a property situated in Co Kerry,
- 13) Undertaking dated 20 December 2000 in respect of a named client and in relation to a property situated in Co Kerry,



- 14) Undertaking dated 7 April 2010 in respect of a named client and in relation to a property situated in Co Kerry,
- 15) Undertaking dated 28 June 2005 in respect of a named client and in relation to a property situated in Co Kerry,
- 16) Undertaking dated 9 December 2004 in respect of a named client and in relation to a property situated in Co Kerry,
- 17) Undertaking dated 28 September 2007 in respect of a named client and in relation to a property situated in Co Kerry,
- 18) Undertaking dated 14 September 2005 in respect of a named client and in relation to a property situated in Co Kerry,
- 19) Undertaking dated 6 April 2009 in respect of a named client and in relation to a property situated in Co Kerry,
- 20) Undertaking dated 2 September 2005 in respect of a named client and in relation to a property situated in Co Kerry,
- 21) Undertaking dated 23 August 2007 in respect of a named client and in relation to a property situated in Co Kerry,
- 22) Undertaking dated 4 March 2005 in respect of a named client and in relation to a property situated in Co Kerry,
- 23) Undertaking dated 2 July 2007 in respect of a named client and in relation to a property situated in Co Kerry,
- 24) Undertaking dated 7 April 2004 in respect of a named client and in relation to a property situated in Co Kerry,
- 25) Undertaking dated 30 March 2004 in respect of a named client and in relation to a property situated in Co Kerry,
- 26) Failed to respond adequately or at all to some or all of the

correspondence sent to him by the complainant, including letters dated 19 January 2012, 19 April 2012, 2 May 2012, 4 May 2012, 10 May 2012, 23 May 2012, 7 June 2012, 15 June 2012, 25 June 2012, 10 July 2012, and 16 August 2012, which were issued prior to the making of any complaint to the Society,

- 27) Failed to respond adequately, in a timely manner, or at all to some or all of the correspondence sent to him by the Society, including letters dated 27 September 2012, 6 November 2012, 10 April 2013, 13 May 2013, and/or 26 June 2013.

The tribunal ordered that the Law Society of Ireland bring its findings and reports before the High Court.

On 9 April 2018, the High Court:

- 1) Declared that the respondent solicitor was not a fit and proper person to be a member of the solicitors' profession, the respondent solicitor having been previously struck from the Roll by order of the court dated 29 February 2016,
- 2) Ordered and adjudged that the Law Society of Ireland recover against the respondent the sum of €19,470.46 (being €1,000 contribution towards the costs of the applicant for each of the 12 matters heard before the Solicitors Disciplinary Tribunal and €7,470.46 measured costs of the within application).

**In the matter of Ciaran Desmond, a solicitor practising under the style and title of Ciaran Desmond, Solicitors, Penrose Wharf Quay, Cork, and in the matter of the Solicitors Acts 1954-2015 [5309/DT08/16]**

*Law Society of Ireland (applicant)*

*Ciaran Desmond (respondent solicitor)*

On 10 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Wrote and/or provided a letter to a named client stating that the respondent solicitor's then firm was "holding €6,927,500 in trust for" a named party, in circumstances where the respondent solicitor knew or ought to have known that the assertion was not true,
- 2) Failed to disclose to his then partners in a timely manner that he had written and/or provided the above-mentioned letter in circumstances where the respondent solicitor knew or ought to have known that the above was not true.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €2,500 to the compensation fund,
- 3) Pay the whole of the costs of the Law Society as taxed by the taxing master of the High Court in default of agreement.

**In the matter of Patrick Callanan and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the Solicitors Acts 1954-2015 [7251/DT88/10]; High Court [2015/6 SA]; Court of Appeal [2015/237]**

*Law Society of Ireland (applicant)*

*Patrick Callanan (respondent solicitor)*

On 27 August 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Provided a certificate of earn-

ings in respect of a named person to Permanent TSB, dated 15 September 2004, knowing the contents of the certificate to be false,

- 2) Provided a certificate of earnings in respect of a named person to ICS Building Society, dated 14 September 2004, knowing the contents of the certificate to be false,
- 3) Provided a certificate of earnings in respect of a named person to IIB Homeloans Limited, dated 15 September 2004, knowing the contents of the certificate to be false,
- 4) Provided a certificate to Permanent TSB and IIB Homeloans representing that a named person was employed as a law clerk with the firm Wells & O'Carroll Solicitors, when that person had never been employed by that firm,
- 5) Gave or caused to be given multiple undertakings to the named lending institutions to register a first charge in their favour in respect of a property at Carrickmacross, Co Monaghan.

The tribunal ordered that the matter should go forward to the High Court and, on 13 April 2015, the High Court ordered that:

- 1) The respondent solicitor be prohibited from practising as a solicitor or from holding himself out as a solicitor entitled to practise for a period of ten years from the date of the making of this order,
- 2) The respondent, at the expiration of the ten-year prohibition period, apply to the court should he wish to resume practice as a solicitor,
- 3) In the event of the respondent solicitor applying to the court to resume practice as a solicitor, that he not be permitted to practise as a sole practitio-



- ner 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,
- 4) The respondent never be given cheque-signing rights over any client account,
  - 5) The respondent, when seeking employment as a solicitor, must furnish any prospective solicitor employer with a copy of these findings,
  - 6) The respondent pay the sum of €5,000 to the compensation fund,
  - 7) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
  - 8) The respondent pay the Society's costs of the within application, to be taxed in default of agreement.

The respondent solicitor appealed the order to the Court of Appeal on 12 June 2015. On 21 July 2017, the Court of Appeal ordered that the said

judgment and order of the High Court made on 13 April 2015 be set aside and that the matter be remitted to the President of the High Court for consideration of the appropriate penalty to be imposed on the respondent, pursuant to the provisions of section 8 of the *Solicitors (Amendment) Act 1960*, as substituted by section 18 of the *Solicitors (Amendment) Act 1994*.

The matter was relisted before the High Court and, on 11 April 2018, the High Court ordered that:

- 1) The respondent is not a fit and proper person to be a member of the solicitors' profession,
- 2) The name of the respondent be struck off the Roll of Solicitors,
- 3) The respondent pay a contribution of €5,000 towards the costs of the applicant for the proceedings in the Solicitors Disciplinary Tribunal,
- 4) The respondent pay the sum of €2,000 to Mr Enda O'Carroll, solicitor, in respect of his expenses for attendances at the Solicitors Disciplinary Tribunal proceedings,
- 5) The respondent pay the Society's costs of the within application, to be taxed in

default of agreement, and such costs to be set off against the costs awarded to the respondent against the applicant in the substantive appeal.

**In the matter of Denis Kelleher, a solicitor previously practising as Denis Kelleher & Company, Solicitors, 70 Main Street, Middleton, Co Cork, and in the matter of the Solicitors Acts 1954-2015 [6606/DT24/16 and High Court record 2018 no 38 SA]**

*Law Society of Ireland (applicant)*

*Denis Kelleher (respondent solicitor)*


On 20 March 2018, 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 an accountant's report for the year ended 30 June 2014 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- 2) Failed to ensure there was furnished to the Society a closing accountant's report, in breach of regulation 26(2) of the

*Solicitors Accounts Regulations 2001*, having ceased his practice on 8 January 2015.

As the respondent solicitor had not filed his reports in advance of the hearing date, the tribunal directed the Society to bring their recommendation forward to the High Court that the respondent solicitor be suspended from practice until such time as he was fully compliant with the *Solicitors Accounts Regulations*. The respondent solicitor's two reports were filed in advance of that High Court hearing date.

On 30 April 2018, the High Court ordered that:

- 1) The respondent solicitor pay a sum of €3,000 to the compensation fund,
- 2) The respondent solicitor pay a contribution of the sum of €1,212 towards the costs of the Law Society of Ireland before the disciplinary tribunal,
- 3) The respondent solicitor pay measured costs of the Law Society of Ireland in respect of the High Court application in the sum of €917, to include stamp duty, with a stay on the payment of the aforesaid sums until 31 July 2018. 



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

NEW RATES  
SINCE JANUARY 2018

## WILLS

**Barrett, Francis (deceased)**, who died on 6 March 2018 in Barcelona, Spain. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Gillian Cusack, McKeever Solicitors, 5 Harbourmaster Place, IFSC, Dublin 1; tel: 01 859 0100, email: [info@mckr.ie](mailto:info@mckr.ie)

**Burke, Patrick, Junior (deceased)**, late of 1 Carna Road, Ballyfermot, Dublin 10, who died on 4 October 2017. Would any person having knowledge of the whereabouts of any will made by the deceased please contact Johnston, Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967, email: [info@johnstonsolicitors.ie](mailto:info@johnstonsolicitors.ie)

**Browne, Fr Kevin (deceased)**, late of Willow Park School, Blackrock, Co Dublin, and Marian House, Kimmage Manor, Whitehall Road, Terenure, Dublin 12, who died on 6 September 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased on or around 23 June 1988, or any other

will made by him, please contact Smyth & Son, Solicitors, 56/57 Rope Walk, Drogheda, Co Louth (ref: WIL020/0002); tel: 041 983 8616, fax: 041 983 5194, email: [securemail@smythandson.ie](mailto:securemail@smythandson.ie)

**Cox, Mary Christina (deceased)**, late of Roseberry, 1A Ard Fraoigh, Clybaun Road, Galway (formerly of 8 Dun a Ri, Kingston, Taylor's Hill, Galway), who died on 29 October 2016. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Silke & Company, Solicitors, 43 William Street, Galway; tel: 091 561 667, fax: 091 567 423, email: [silkesolicitors@gmail.com](mailto:silkesolicitors@gmail.com)

**Fallon, Patrick Aiden (otherwise Paddy) (deceased)**, retired printer, late of 17 Linley Close, Northwick Road, Worcester, Worcestershire, England, and formerly of 10 Coolatree Park, Beaumont, Dublin 9, who died on 1 August 2015. Would any person holding or having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Brooks & Company, Solicitors, Baldwin Street, Mitchelstown, Co

Cork; tel: 025 24833, email: [info@brooksandco.com](mailto:info@brooksandco.com)

**Gallagher, John (deceased)**, late of Kilmore, Athleague, Co Roscommon, who died on 4 July 2009. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Patrick J Durcan & Company, Solicitors, James Street, Westport, Co Mayo; F28 KC52; DX 53 002 Westport; tel: 098 25100, email: [admin@patrickjdurcan.ie](mailto:admin@patrickjdurcan.ie)

**Gibney, Agnes (deceased)**, late of Blackwater, Ratoath, Co Meath, who died at Ratoath Manor Nursing Home on 17 April 2015. Would any person having knowledge of the whereabouts of the original will dated 9 April 1981, or if any firm is holding same, please contact John Larney, Gleeson McGrath Baldwin Solicitors, 12 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2106, email: [jlarney@gmgb.ie](mailto:jlarney@gmgb.ie)

**Kelly, Michael (deceased)**, late of 10 South Terrace, Inchicore, Dublin 8, who died on 11 November 2011. Would any person having knowledge of any will made by the deceased please

contact Johnston Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967 or email: [info@johnstonsolicitors.ie](mailto:info@johnstonsolicitors.ie)

**Lalor, Brigid Christina (otherwise Christina Lalor), (deceased)**, late of Townparks, Mountmellick, Co Laois. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 19 February 2018, please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: [donalwdunne@securemail.ie](mailto:donalwdunne@securemail.ie)

**O'Grady, Robert (deceased)**, late of 40 Clonard Court, Balbriggan, and formerly of 46 Rathvale Park, Ayrfield, Dublin 13, who died on 16 December 2017. Would any person having any knowledge of the whereabouts of a will executed by the above-named deceased please contact Brian O'Grady, 46 Rathvale Park, Ayrfield, Dublin 13; tel: 087 647 6435 or email: [brianograda@gmail.com](mailto:brianograda@gmail.com)

**Sweeney, Patrick (deceased)**, late of 118 JKL Avenue, Carlow, and formerly of Shanbally, Ringaskiddy, Co Cork, and also of the Naval HQ, Naval Base, Cobh, Co Cork, who died on 27 January 2018. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Niamh O'Connor, solicitor, JW O'Donovan, Solicitors, 53 South Mall, Co Cork; tel: 021 730 0200, email: [noconnor@jwod.ie](mailto:noconnor@jwod.ie)

**Walsh, Margaret (deceased)**, late of 126 St Michael's Avenue, Tipperary, Co Tipperary. Would any person having knowledge of any will made by the above-named deceased, who died on 28 May 2016, please contact Brendan Hanifin & Co, Solicitors, 10 The Plaza, Main Street, Blanchardstown, Dublin





15; tel: 01 820 6459, email: [brendanhanifin@eircom.net](mailto:brendanhanifin@eircom.net)

**Ward, Ann Frances (deceased)**, late of 'Avalon', 12 Ashton, Blessington, Co Wicklow. Would any person having knowledge of a will made by the above-named deceased please contact O'Brien Ronayne, Solicitors, 5A Main Road, Tallaght, Dublin 24; tel: 01 424 6200, email: [geraldine@obr.ie](mailto:geraldine@obr.ie)

**White, Joseph (also known as Josie) (deceased)**, late of Dunmuckrum, Ballyshannon, Co Donegal, who died on 5 January 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact VP McMullin, Solicitors, Tircconnell Street, Ballyshannon, Co Donegal; tel: 071 985 1187, fax: 071 985 2057, email: [jflannery@vpmcmullin.com](mailto:jflannery@vpmcmullin.com)

#### MISCELLANEOUS

**West of Ireland (county town)** – seeking interested party to acquire long-established solicitors' practice with a good client base. Reply to **box no: 01/06/18**

#### TITLE DEEDS

**Property at 10 South Terrace, Inchicore, Dublin 8.** Would any person having knowledge of the whereabouts of the following original document: deed of conveyance dated 6 October 1974 and made between Coras

Iompair Éireann of the one part and Michael Kelly and Mary Kelly of the other part. Firstly, all that and those the dwellinghouse and garden known as number 10 South Terrace, Inchicore, in the county borough of Dublin and, secondly, the rights, easements, and appurtenances attached thereto, please contact Donall Johnston, Johnston Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967, email: [info@johnstonsolicitors.ie](mailto:info@johnstonsolicitors.ie)

#### 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*: an application by **Leinster Sq Bond Street Limited**

Take notice any person having an interest in the freehold estate or any intermediate interest in the property now known as 15 Leinster Square, Rathmines, Dublin 6, situate in the urban district of Rathmines and Rathgar, in the barony of Uppercross, formerly in the county and now in the city of Dublin, and held pursuant to an indenture of lease made on 4 September 1928 between Godfrey Robert Wills Sandford and Howard Rundell Guinness of the first part, Henrietta Wills-Sandford-Wills of the second part, and Charles Joseph Priest, Frederick James Priest, Edward Percy Maybury Butler and Herbert Wood of the

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third part, for a term of 153 years from 25 March 1928, subject to the yearly rent of IR£59 thereby reserved, but indemnified against all but IR£9.83 thereof.

Take notice that Leinster Sq Bond Street Limited, being the party entitled to the lessee's interest in the said lease as respects the said premises, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any 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 title to the aforesaid property to the below named

within 21 days of this notice.

In default of any such notice being received, Leinster Sq Bond Street Limited intends to proceed with the application before the county registrar for the county of Dublin at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for such orders or 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 aforesaid property are unknown or unascertained.

Date: 6 July 2018

Signed: Gordon Judge Solicitors (solicitors for the applicant), 123 Lower Baggot Street, Dublin 2

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**Archdiocese of Dublin**

**OPPORTUNITY FOR AN  
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The Archdiocese of Dublin is currently seeking to recruit an In-House Solicitor for a 12 month contract on a part-time basis. Reporting to the General Manager of the Archdiocese of Dublin the In-House Solicitor will engage in property transactions, prepare licences and lease agreements and advise on general regulatory matters in addition to working in cooperation with the Diocese's external legal advisers.

**REQUIRED:**

- **Qualified solicitor with a minimum of 10 years post qualification experience;**
- **Strong background in conveyancing;**
- **Knowledge and understanding of the structure and ethos of the Roman Catholic Church in Ireland is desirable.**

To be considered for this role, please email a CV and cover letter to [Judith.Maxwell@dublindioocese.ie](mailto:Judith.Maxwell@dublindioocese.ie) by Friday 20th July 2018.



NE ULTRA CREPIDAM JUDICARET

## WILL ARGUE FOR CASH

Apparently, there's an emerging trend for companies to hire 'chief philosophy officers', *Forbes* reports. So, are 'in-house philosophers' a thing?

Christian Voegtlin, of Audencia Business School in France, says: "Some Silicon Valley-based companies, including Google, have started to employ in-house philosophers. Others use the service of philosophical counselors to engage teams of managers with philosophical questions related to their daily business."

But what do questions such as 'what is a good and virtuous life?' have to do with business?



Voegtlin says: "These questions can be particularly relevant in an environment where people are experimenting with innovative technology, such as artificial intelligence. Philosophers can help with questions about what standards should apply when developers are programming virtual intelligence, or designing how AI should interact with humans."

"Philosophy can help to provide purpose and guidance by tackling fundamental questions about the meaning of life. It is important for answering questions relating to how we live together and treat others."

A HORSE WITH NO ...  
OH, WAIT

A horse called 'Justice' is trying to sue its former owner for neglect in Oregon, USA, *The Independent* reports.

The horse, formerly known as 'Shadow', is a plaintiff in a suit against Gwendolyn Vercher. According to the Animal Legal Defense Fund, Justice is seeking \$100,000 in compensation for severe neglect that means he will require medical

care for the rest of his life.

If the lawsuit is successful, it will be the first time that an animal has been able to sue an abuser in a court and could transform the rights that animals have in the future. Previous hearings, such as the chimpanzee who was kept as a prisoner in a trailer, have been unsuccessful in helping animals earn 'basic human rights'.

'GET A NEW  
DICTIONARY',  
LAWYER TOLD

A Nigerian lawyer is suing Oxford University Press for apparently mixing up the definitions of 'mortgagee' and 'mortgagor', *Legal Cheek* reports.

Ogedi Ogu, whose first language isn't English, allegedly purchased the *Oxford Mini Reference Dictionary* in the mid-2000s. He said the word 'mortgagee' was there defined as the borrower in a mortgage transaction, and the word 'mortgagor' as the lender.

Ogu says he relied on incorrect definitions when providing legal advice and was later corrected by a colleague, who directed him to a different dictionary. The claimant says this mistake saw his colleagues stop asking him for legal advice and caused him embarrassment and



a loss of professional esteem.

He is seeking damages in the Lagos High Court, and it's understood he also wants the court to order that Oxford University Press includes a caveat in its dictionaries making clear they are only available as reference tools.

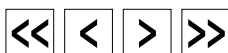
## KARMA CHAMELEON

An Indian government engineer who was served with notice asking why he had only attended work for 16 days over eight months told his employers that he was too busy being the tenth incarnation of the god Vishnu, according to *The Independent*.

Rameschandra Fefar said: "I am doing penance at home by

entering into the fifth dimension to change the global conscience. This work I cannot do in the office. Thus I don't remain physically present in the office."

When questioned on TV, he said: "I realised that I am Kalki avatar when I was in my office in March 2010. Since then, I am having divine powers."



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Ref: 918376

Should you require further information about any of these roles or have any other legal recruitment requirements, please contact Michael Minogue on [m.minogue@brightwater.ie](mailto:m.minogue@brightwater.ie) or Sorcha Corcoran on [s.corcoran@brightwater.ie](mailto:s.corcoran@brightwater.ie) in the strictest confidence.

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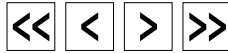
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Applicants will be required to have extensive experience in the establishment, operation and regulation of all types of funds (including UCITS, non-UCITS, hedge funds, private equity funds and other specialised fund products). You will have approximately six years' experience and admission in the UK or Luxembourg is advantageous although not essential.

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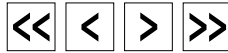
commercial contracts and general corporate/commercial advice.

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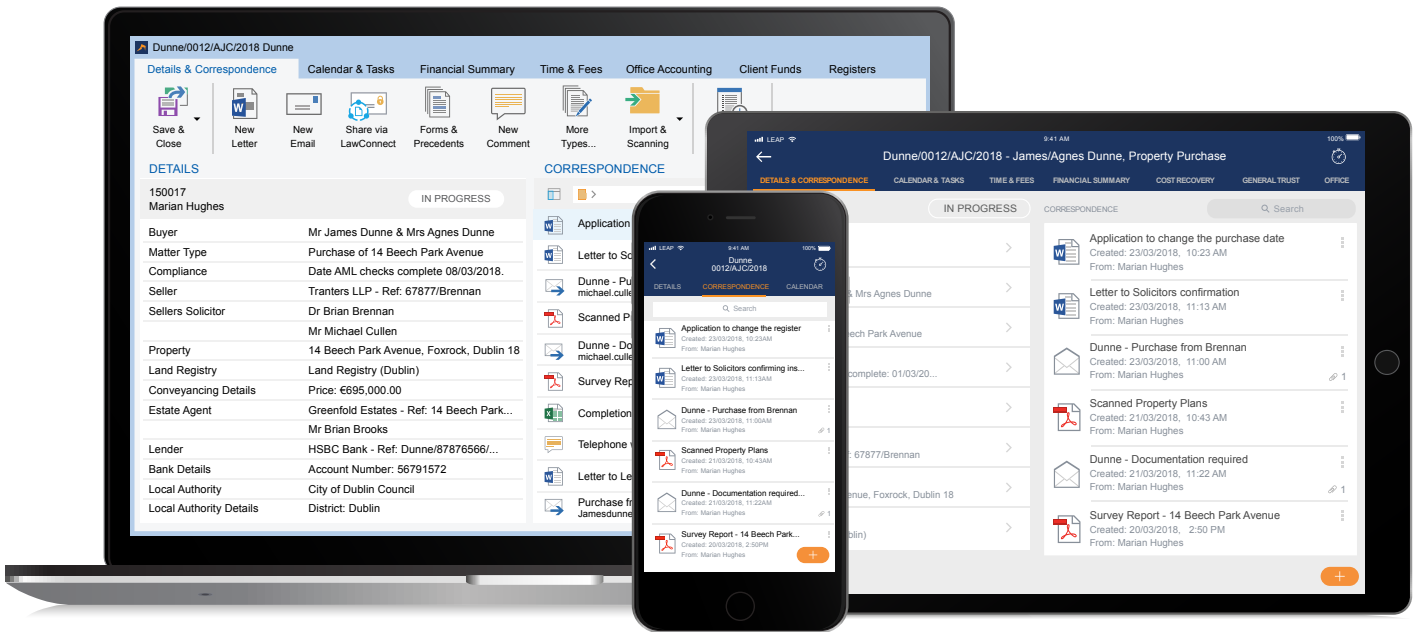
The firm is offering the right candidate a long term career, with equity partnership potential, as well as a competitive salary and benefits package including pension and private health insurance.

Contact Sharon Swan for a confidential discussion on 01 685 4017  
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