



Arrears ended

As businesses reopen, many must deal with lockdown rent arrears



In the heat of the night

Discrimination on race is still the most frequent complaint seen by the WRC



Pick up pandemic

Exploring creativity for mental health and pandemic parenting

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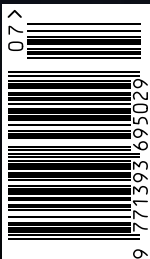
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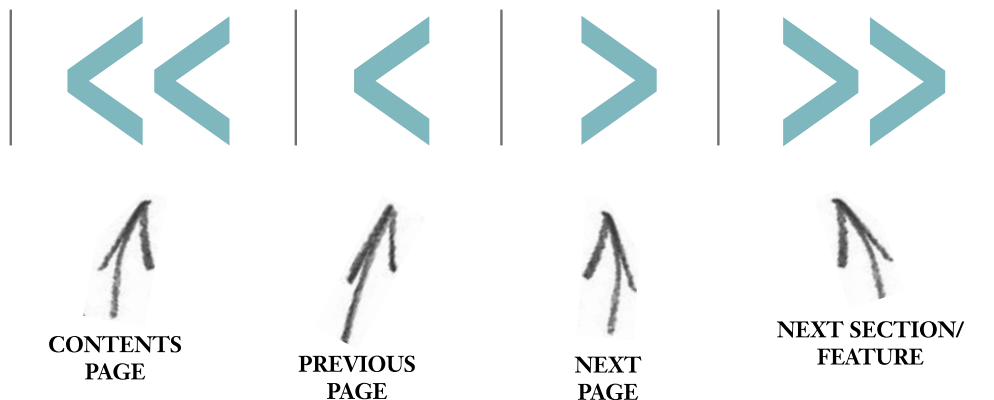
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ARE YOU READY?

As firms across Ireland assess life after lockdown, embracing cloud technologies fast became an overnight necessity. For some, it has been a challenge to provide the technology platform on such short notice to enable their staff to keep working, particularly to the same levels of productivity. The Firms that had already embraced Cloud Technology were able to move quickly when lockdown came into effect.

SureSkills, in partnership with IBM provide critical IT Solutions and Support to several of the top Firms in Ireland and are considered to be one of the experts in the Legal Sector when it comes to IT Systems. Leading Irish legal firms including ByrneWallace, Eversheds Sutherland, Dillon Eustace, Eugene F Collins, Hayes & Phillip Lee rely on SureSkills to deliver technology infrastructure and consulting services that offer flexibility – a valued commodity in these disruptive, uncertain times.

"As a result of the great people, impeccable technical knowledge, and flawless execution from the SureSkills team, our relationship has gone from strength to strength."

Rory Clerkin, IT Manager, Eugene F. Collins

"ByrneWallace have worked with SureSkills, a valued Strategic Partner, for over 10 years. SureSkills remain consistently reliable and never let us down."

John Kelly, Head of IT, ByrneWallace.

"We chose SureSkills for its complete 'as a service' model. Very early in our interaction with their team, it was clear to us that they are all about customer focus. Their technical skills, along with how they took the time to understand our needs as a firm, meant it was a seamless transition to the new environment."

Paul Cullen, IT Manager, Dillon Eustace.

PRESIDENT'S MESSAGE

THE POWER WITHIN

The Government's focus is shifting to considering how to revive business and the economy without triggering a second wave of the coronavirus. That is the focus shared by all of us in our respective practices.

While the depth and duration of the crisis remains unclear, what is clear is that many colleagues are returning or preparing to return to their offices in accordance with the Return to Work Protocol and, by necessity, are endeavouring to embrace what has been referred to by some as 'the new normal'.

Magazines in our waiting areas have been replaced by hand sanitisers and facemasks. Partitions replace open-plan spaces. Work hours are staggered. Directional signage is prominently placed. Gone are the days when we talked about cleaning our offices – our language has changed to decontaminating our offices. Zoom and other platforms replace face-to-face meetings. These changes are necessary and manageable, and will assist in stemming a second wave.

Financial recovery

Aside from the logistical challenges, I recognise that the economic recovery is likely to be the most challenging period ever faced by the solicitors' profession. We must endeavour to surmount the challenges and, to do so, we must not take a short-term view.

Of course, this is easier said than done, with inevitable cash-flow difficulties and financial uncertainties in the weeks and months ahead. Financial worries frequently give rise to health issues. We must, therefore, continue to be mindful of each other's physical and mental health. It is very likely that a colleague on your radar is suffering in silence. The Law Society has accelerated the availability of [LegalMind](#), and I would encourage colleagues to avail of the service. You have to be at your

strongest when you are feeling your weakest.

Over the past three months, I have remained in daily communication with colleagues throughout the country, and I remain committed to listening and responding to your concerns. I also remain committed to engaging with all relevant stakeholders to lead the profession in navigating the recovery phase.

Programme for Government

As I write this message, a Programme for Government has been published. It is very reassuring that the programme reflects reforms that the Law Society has actively lobbied on. When this *Gazette* is published, the programme will either be approved or discarded. Either way, our lobbying will continue in the interests of the profession.



“ THE FINANCIAL RECOVERY IS LIKELY TO BE THE MOST CHALLENGING PERIOD EVER FACED BY THE SOLICITORS' PROFESSION ”

Embracing the 'new normal', the Society held its first-ever hybrid Council meeting on Friday 12 June. 'Hybrid', as the name suggests, meant that the meeting was attended by socially distanced Council members, physically seated in both the lecture theatre and the James O'Sullivan Room, together with members Zooming from other locations outside the Law Society. It was a very constructive meeting, where we reflected on the last three months. We now look ahead to preparing for recovery and for the future. The past cannot be changed, but the future is within our power. [g](#)

MICHELE O'BOYLE, PRESIDENT

PG SHUTTERSTOCK



g Volume 114, number 6

Subscriptions: €65 (€95 overseas)

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fax: 01 672 4801
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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

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THE BIG PICTURE

PURPLE REIGN

Flare smoke envelops an armed supporter of Black Lives Matter at the base of the statue of Confederate general Robert E Lee in Richmond, Virginia, on 20 June. Demands have been growing for the removal of memorials to the Confederate rebellion, which are viewed as symbols of slavery and racism. The calls follow civil unrest after the killing of George Floyd by police in Minneapolis on 25 May. Virginia Governor Ralph Northam ordered the removal of the statue, but the order was frozen by a court injunction. Conservative groups oppose the removal of the statues



FIRST EVER 'HYBRID' COUNCIL MEETING



ALL PICS: CIAN REDMOND

The Law Society held its first-ever 'hybrid' Council meeting on Friday 12 June – due to the global pandemic. Observing the two-metre social distancing requirement, participants who were physically present at Blackhall Place on the day split into two groups: one attending in the Education Centre's lecture theatre, the other in the James O'Sullivan Room downstairs. Other Council members took part via Zoom from locations around the country



Many Council members took part via Zoom



Council members and director general Ken Murphy engage in pre-meeting discussions



Law Society President Michele O'Boyle addresses a rather subdued Council meeting



President Michele O'Boyle



Up front: Mary Keane (deputy director general), Paul Keane and Christopher Callan



Greg Ryan (*right*) taking safety precautions, in the presence of Liam Kennedy and Barry MacCarthy



Daniel E O'Connor



Brendan J Twomey listens attentively



Keeping their distance – director general Ken Murphy in conversation with Shane McCarthy, Sonia McEntee and Christopher Callan

LAW SOCIETY WELCOMES NEW HIGH COURT PRESIDENT

■ The Law Society has welcomed the nomination of the new President of the High Court, Ms Justice Mary Irvine – the first woman to be appointed to this role.

Speaking after the announcement on 12 June, Law Society President Michele O’Boyle said: “I welcome, in the warmest of terms, this nomination of Ms Justice Mary Irvine, both as an outstandingly able judge and as the first woman in history to hold this absolutely key role in the Irish judiciary. She will bring the qualities of independence, deep legal knowledge and insight that have characterised her distinguished career as a judge.”

Ms Justice Irvine was born in Dublin and educated at the convent of the Sacred Heart, Mount Anville, UCD, and the King’s Inns. She was called to the Bar in



Ms Justice Mary Irvine is the first woman to be appointed High Court president

1978 and the Inner Bar in 1996. As a member of the Inner Bar, she specialised in medical law and was the legal assessor to the fitness to practice committees of both the Medical Council and An Bord Altranais.

Ms Justice Irvine was also elected to the Bar Council and

served as secretary. In 2004, she was elected a Bencher of the King’s Inns. She was appointed to the High Court in 2007.

In the High Court, she was in charge of the personal injuries lists from 2009 to 2014. She was also responsible for the management and determination of all

garda compensation claims.

Following the retirement of Mr Justice John Quirke, she chaired the Working Group on Medical Negligence and Periodic Payments, established by the President of the High Court in 2010 to examine the system within the courts for managing claims for damages arising out of alleged medical negligence and to identify shortcomings in that system. On its establishment in 2014, Ms Justice Irvine was appointed a judge of the Court of Appeal.

In 2018, she was appointed to chair the Cervical Check Tribunal, established by the Government to hear and determine claims made outside of the court process arising from acts of negligence on the part of Cervical Check, as provided for in the *CervicalCheck Tribunal Act 2019*.

WOMEN IN LEADERSHIP PROGRAMME LAUNCHES

■ The Law Society is inviting applications for both mentors and mentees on a country-wide basis, and from all areas of practice, for this year’s Women in Leadership mentoring programme. The programme is presented in collaboration with Law Society Finuas Skillnet, and training is delivered by Katharine Slattery of *Peer Mentoring Resources*.

The programme aims to empower and support women in advancing their careers to a senior level.

As a mentee, it could be that you have concerns about how to progress to your next role, want help to develop a new skill that you find difficult, or simply need some guidance through these turbulent times. As a mentor, passing on your experience and knowledge can be very reward-



PICT: SHUTTERSTOCK

ing, and it is a great way to give back to others in the profession.

What’s next?

- Complete an [expression of interest form](#) – available on the Law Society website,
- Matching of mentors and mentees takes place in July and August, and

- Attend a training session on best-practice mentoring techniques (October).

Once matched, mentoring partners generally commit to meeting once a month over the course of the programme. Mentoring relationships run from October 2020 to May 2021.

Apply by Friday 10 July for a chance to be matched in this year’s programme.

Please address any queries to Michelle Nolan, member engagement manager, at lw@lawsociety.ie.

Find out more on the website at www.lawsociety.ie/womeninleadership.

CLOUD TECHNOLOGY GIVES FIRMS THE EDGE DURING SHUTDOWN

■ As law firms across Ireland endured an unexpected lockdown, embracing cloud technologies fast became an overnight necessity, *writes Gordon Smith*.

For some, it was a challenge to provide a technology platform on such short notice so that their staff could keep working, particularly to the same levels of productivity. Those that had already embraced cloud technology were able to move quickly when the restrictions came into effect.

Leading Irish law firms have been working with Irish and global company SureSkills to provide them with critical IT support and deliver solutions that offer flexibility – a valued commodity in disruptive, uncertain times.

SureSkills provides technology infrastructure, consulting, and training services, and has extensive expertise in understanding and meeting the specific needs of the legal sector.

One of their clients, ByrneWallace, has been working with them for over ten years. John Kelly (head of IT) says: “They remain consistently reliable and never let us down.”

Paul Cullen (IT manager, Dillon Eustace) adds: “We chose SureSkills for their complete ‘as-



PIC: SHUTTERSTOCK

a-service’ model. Very early in our interaction with their team, it was clear to us that they are all about customer focus.”

Cost savings

Eversheds Sutherland Ireland and Eugene F Collins were the first two firms to move to the SureSkills Managed Cloud Environment, which is built on IBM Cloud.

More recently, Eversheds adopted the Thompson Reuters Elite 3E practice-management system. Facing a potentially large capital investment if it wanted to run the entire infrastructure in-house, the firm instead worked with SureSkills to run 3E in the cloud.

The firm’s IT director Nicho-

las Eustace says: “In line with our long-term IT strategy, and working closely with SureSkills, we were able to integrate this new critical production system with our existing managed cloud environment. This offered us scalability, resilience and on-demand performance, built on a consumption-based commercial model.”

Shortly before COVID-19 hit, Beauchamps had been testing a cloud-based desktop solution from SureSkills to enhance its existing remote connectivity. Paul Clarke (director of operations) says: “The key to success was the ability to ramp up, and down, on the SureSkills platform – a service that is flexible, agile and reliable.”

That proved vital when the restrictions to stop the spread of COVID-19 came into effect. “To the outside world and our clients, it was seamless business as usual,” says Clarke.

Secure access

SureSkills has recently moved several firms, including Hayes and Philip Lee, to Microsoft 365, which enables secure access to emails and documents from any location, on any device.

Jason McGovern (IT manager, Philip Lee) says: “In an industry where work is so time sensitive, every second counts. Having your whole office as a resource you can take with you is a huge benefit of remote working, and it creates huge efficiencies for our staff.”

SureSkills’ Mark Feldman says that years of working closely with law firms have enabled the company to deliver solutions that meet the specific requirements of the sector. “Our customers need agility – especially at a time like this – without compromising on security and confidentiality of important client documents. We ensure that the solutions align with best practice, giving flexibility and productivity, while protecting valuable information and managing risk.”

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ENDANGERED LAWYERS

STEVEN DONZIGER, USA



PICTURE: EPA/JOSE JACOME

Steven Donziger is a New York attorney who, in 1993, joined the legal team acting on behalf of indigenous people of the Ecuadorian Amazon against Chevron in a major environmental and human rights case. Donziger has been under house arrest for the past 11 months on criminal-contempt charges being prosecuted by a private law firm.

In a case before federal judge Lewis A Kaplan, seeking the enforcement of a US\$9.5 billion judgment of the Supreme Court of Ecuador, serious allegations of corruption were made by Chevron. In 2011, Chevron filed a *Racketeer Influenced and Corrupt Organisations Act (RICO)* complaint against Donziger and two Ecuadorian attorneys, claiming that the judgment obtained after ten years of litigation before three levels of Ecuadorian courts was the product of fraud and extortion.

The RICO litigation resulted in an order requiring Donziger to turn over his client communications for two decades to Chevron. Donziger objected and appealed. When Judge Kaplan nonetheless ordered the production of privileged information, Donziger refused on principle, and openly stated he was willing to be held in civil contempt of court.

Judge Kaplan did hold him in civil contempt and, in July 2019, drafted extraordinary crimi-

nal contempt charges against Donziger. The judge referred the case to the US Attorney's Office for the Southern District of New York, which declined to prosecute. Judge Kaplan appointed a private law firm, Seward & Kissel, to prosecute. He also bypassed the random case-assignment process and assigned Judge Loretta Preska to oversee the prosecution.

Judge Kaplan also referred Donziger to the New York Bar, requesting his law license be suspended on the basis of the claim that he was an "immediate threat to the public interest". Donziger's licence was suspended for 18 months until, on 24 February 2020, the Supreme Court of the State of New York issued a recommendation that Donziger's suspension should be ended.

Judge Preska remanded Donziger to home detention, along with the seizure of his passport, and required a US\$800,000 bond as conditions of his pre-trial release. Judge Preska found that, even though Donziger has a family and deep ties to New York, the risk that he would flee the country required house arrest.

Donziger faces a maximum penalty of six months' imprisonment for criminal contempt, but has already suffered 11 months of pre-trial home detention.

Alma Clissmann is a member of the Human Rights Committee.

BRITISH DIVERGENCE IN DATA PROTECTION LAW 'INEVITABLE'

DCU law lecturer Dr John Quinn has stated that a divergence in data protection laws between Britain and the EU is inevitable following the end of the Brexit transition period.

Writing in the *DCU Brexit Institute 3rd Brexit Report*, published on 25 June, Dr Quinn says that, following the transition period, GDPR data protection law will no longer apply in Britain.

According to Britain's independent Information Commissioner's Office, the British Government intends to incorporate the GDPR into domestic law from the end of the transition period. However, its adoption of the 'UK GDPR' will not necessitate that it will be deemed 'adequate'.

The rules set out in the GDPR for the protection of personal data, the rights of data subjects, and the principle of consent will

continue to apply in Britain. But while there may be initial legal alignment at the end of the transition period, a divergence in data-protection rules seems inevitable, since Britain will no longer be subject to decisions of the two primary harmonising EU authorities on data protection – the Court of Justice of the EU and the European Data Protection Board.

"Divergence on data protection principles and interpretations of the GDPR seems inevitable, as different cases are heard in the different jurisdictions and the different courts are guided by different constitutional frameworks," Quinn concludes.

The most likely obstruction to an adequacy finding is Britain's *Investigatory Powers Act 2016*, which allows for broad interception and communications acquisition powers, greatly limiting the privacy rights of individuals.

I'M NOT A PHEASANT PLUCKER, BUT...



Tina Beattie (financial regulation manager at the Law Society) got a slightly different perspective on remote working when a wild pheasant wandered by the window of her home office on 15 June. "Just one of the many visitors to my Wicklow garden," Tina observed. You'll go a long way to find one of those near George's Court on your return to the work office, Tina! Hmmm... Tasty!

CATASTROPHIC-INJURY PIONEER GIVES EXPERT NURSING OPINIONS

■ Nurse and midwife Siobhan McSweeney took early retirement as assistant director of nursing at Dublin’s Tallaght Hospital to begin working as a case manager supporting families of loved ones with catastrophic injuries in Ireland, *writes Mary Hallissey.*

A pioneer of this type of service nationwide, McSweeney is a medico-legal expert witness and nursing consultant who provides cost-of-care and witness-of-fact reports for periodic payment orders. Her company, MCS Case Management, works with solicitors, the State Claims Agency, and the office of the Wards of Court.

An ‘expert nursing opinion’ identifies key issues affecting standards of care, examines omissions in care provided, and gives an opinion. When preparing cost-of-care reports, McSweeney uses her expertise in case management to ensure that all of the necessary costs are provided for.

“My case-management clients have wide and varied needs,” she says, “from physiotherapy, occupational therapy, speech-and-language therapy, augmentative and alternative communication



Siobhan McSweeney

technology for non-verbal clients, assistive technology, music therapy, equine therapy, liquid therapy and virtual rehabilitation therapies, to daily ongoing care.”

McSweeney liaises with the families of those with catastrophic injuries and complex needs, such as cerebral palsy, acquired brain injury or spinal injuries. Her role is to assist families to maximise the independence and quality of life for their loved ones by sourcing and monitoring the necessary services and supports.

MCS Case Management provides a tailored service to families – sourcing and implementing nursing and personal-assistant care packages, assisting

with accessible accommodation, therapy and rehabilitation programmes, and giving ongoing support to families after their legal case has settled. Once established, the service is continually monitored to ensure it is cost effective.

Online consultations

When McSweeney set up her service, the practice of case management was still in its infancy in Ireland. Now she has a thriving practice and a grateful clientele, but her business has hit a bump in the road with COVID-19. Because of the travel restrictions, she has turned to online consultations in order to continue her work, which cannot be delayed – virus or not.

The impact of COVID cannot be underestimated, she says, due to the closure of special schools. She has now completed a training course in remote consultation, and has found this useful and effective in place of visiting clients.

Following a financial settlement, families often have to set about dealing with architects and engineers for a new and accessible purpose-built family

home. This type of project can be difficult, even when everyone involved is in the whole of their health. A catastrophic injury complicates matters enormously, and this is where MCS comes in: “Often, families must provide accommodation for live-in carers, with a separate entrance and parking for staff,” McSweeney explains.

This can entail significant building projects and, given that the person suffering a catastrophic injury is unlikely to be attending school or work, consideration must also be given to potential home-based services, such as a hydrotherapy pool, as well as therapy-treatment and sensory rooms.

In one case, the planting of polytunnels (with the aid of personal assistants) has provided huge emotional satisfaction to the person with the catastrophic injury, she says.

The company’s website (www.mcscasemanagement.ie) shares information on news, therapies, services, organisations and support groups, both nationally and internationally. The aim is to share this information, freely, with all affected families.

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COVID-19 PAYMENT EXTENSION UNTIL 31 AUGUST GOOD NEWS FOR SMEs

■ On 5 June, the Temporary Wage Subsidy Scheme (TWSS) was extended until the end of August, writes *Mary Hallissey*. Revenue will continue to administer the scheme until 31 August, reimbursing employers for subsidy amounts paid to eligible employees, notified to Revenue via the payroll process.

Over 55,500 employers have already received subsidy payments under TWSS. Revenue will very shortly be contacting these employers to confirm that the scheme is operating correctly and will seek certain documentary evidence to establish that:

- Employers participating in the scheme meet the eligibility criteria,
- Employees are receiving the correct amount of subsidy, and
- The subsidy amount is being correctly identified in employee payslips.

Revenue expects that these contacts will confirm that the vast majority of employers are fully compliant in their operation of the TWSS.

Revenue update

The main points include:

- An extension of the current scheme until 31 August 2020,
- Confirmation of the scheme's eligibility criteria for the duration of the extension,
- How employers can stop claiming TWSS,
- Tapering of subsidy payments as normal business resumes and employers begin to increase the amount of wages they are paying,
- Revised tax-credit certificates for employees in receipt of payments under TWSS,
- A new facility in Revenue's myAccount system for employ-

PICTURE: BENNETT/TALAMY STOCK PHOTO

but had reasonable grounds for assuming the criteria would be met, the employer should now cease claiming the subsidy for the extended scheme.

Revenue will not seek to claw back the subsidy paid to such employers where evidence of the best-estimate determination supporting the original application is found to be reasonable.

If there was not a reasonable basis, the subsidy will be repayable to Revenue.

How to stop claiming TWSS

The scheme is operated by employers entering details into payroll as a non-taxable amount and setting the PRSI class to J9 for eligible employees.

Employers who no longer wish to claim the TWSS or who, following a review, did not meet the eligibility criteria, should no longer make payroll submissions using the J9 PRSI class.

The subsidy payment rates remain unchanged for the duration of the extended scheme and continue to be based on the employee's normal net weekly pay for January and February 2020.

As the lifting of public-health restrictions continues, many sectors are beginning to reopen, with employees returning to work.

Where a business starts to recover from the effects of the pandemic, and the employer's contribution to the employee's pay increases, TWSS payments will be subject to tiering and tapering. In the circumstance where an employer pays normal pre-COVID wages, no subsidy is due.

Details of the current TWSS rates and the tapering applicable can be found in the 'Rates of subsidy from 4 May 2020' section on Revenue's [website](#).

ers to look up their TWSS payments,

- Changes to the scheme to incorporate apprentices returning to work following the completion of a SOLAS education and training programme,
- Employer compliance programme, and
- The latest TWSS statistical report.

Employer eligibility

The eligibility criteria for continued participation in the scheme (or to now join the scheme) remains unchanged, and continues to relate to the level of negative economic disruption suffered by the employer due to COVID-19 in the period from April to June.

The scheme remains applicable to employees who were on the employer's payroll at

29 February 2020, and for whom a payroll submission was made to Revenue in the period from 1 February to 31 March.

When the scheme was announced in March, employers joined based on the principles of self-assessment and a best-estimate determination about a decline in turnover, customer orders, or any other 'reasonable-basis' measurement. Revenue has advised employers that, as the end of the second quarter approaches, they should review their eligibility for the scheme and determine whether they did, in fact, meet the eligibility criteria.

Where, following a review, an employer determines that the eligibility criteria were met, they can continue to avail of the scheme for the extension period.

If an employer decides that the eligibility criteria were not met,

IRISH CONVEYANCING LAW (4TH EDITION)

JCW Wylie and Una Woods. Bloomsbury Professional (2019), www.bloomsburyprofessional.com. Price: €275.

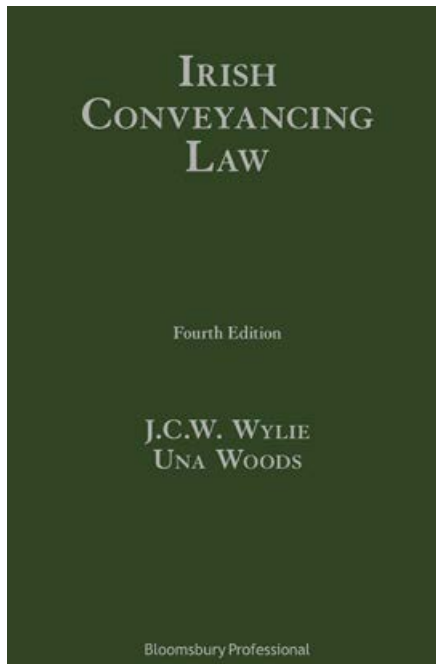
Chapter 1 of this book should be mandatory reading for all lawyers, including any practitioner unfamiliar with property law, as it brings us right up to date on current conveyancing practice.

There have been many changes in property law and practice within the past few years. This was facilitated by multiple factors, including long-awaited reforms in conveyancing law and digitisation of title, coupled with compulsory first registration of all property acquisitions.

The remaining chapters of the book dissect the various elements of a property transaction, taking us through the different types of contract, contractual conditions, pre-contract matters, and requisitions on title. It also brings us through remedies for enforcement of contracts, post-completion remedies, forms of deeds, and the documents required for particular transactions.

As most titles are now registered in the Land Registry, title has become less of an issue in conveyancing transactions. It is the ancillary items, such as planning and property taxes, that seem to occupy most of the time of the modern property practitioner.

Unfortunately, while current systems facilitate efficient conveyancing, practitioners are still left with the legacy of unregistered titles in urban areas. Nobody wants to be stuck with an unregistered title that is incapable of passing the forensic scrutiny of the Property Registration Authority on an application for



first registration. This is the primary reason why all conveyancers should have this book in the office.

This latest edition of *Irish Conveyancing Law* has been well used and referenced by me many times since I first read it. This publication provides an invaluable resource for unravelling ‘tricky’ titles, and it is a ‘must buy’ for all conveyancers and property litigators.

Mairead Cashman is assistant law agent at Dublin City Council.

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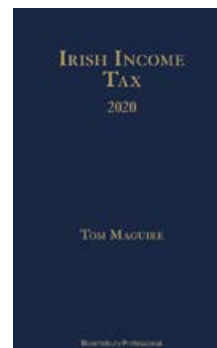
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Irish Income Tax 2020

By Tom Maguire

This new edition is based on the Finance Act 2019, and has been updated to cover several new areas including:

Key Employee Engagement Programme (KEEP) and Emergency Measures in the Public Interest (Covid-19) Act 2020, including the Temporary Wage Subsidy.

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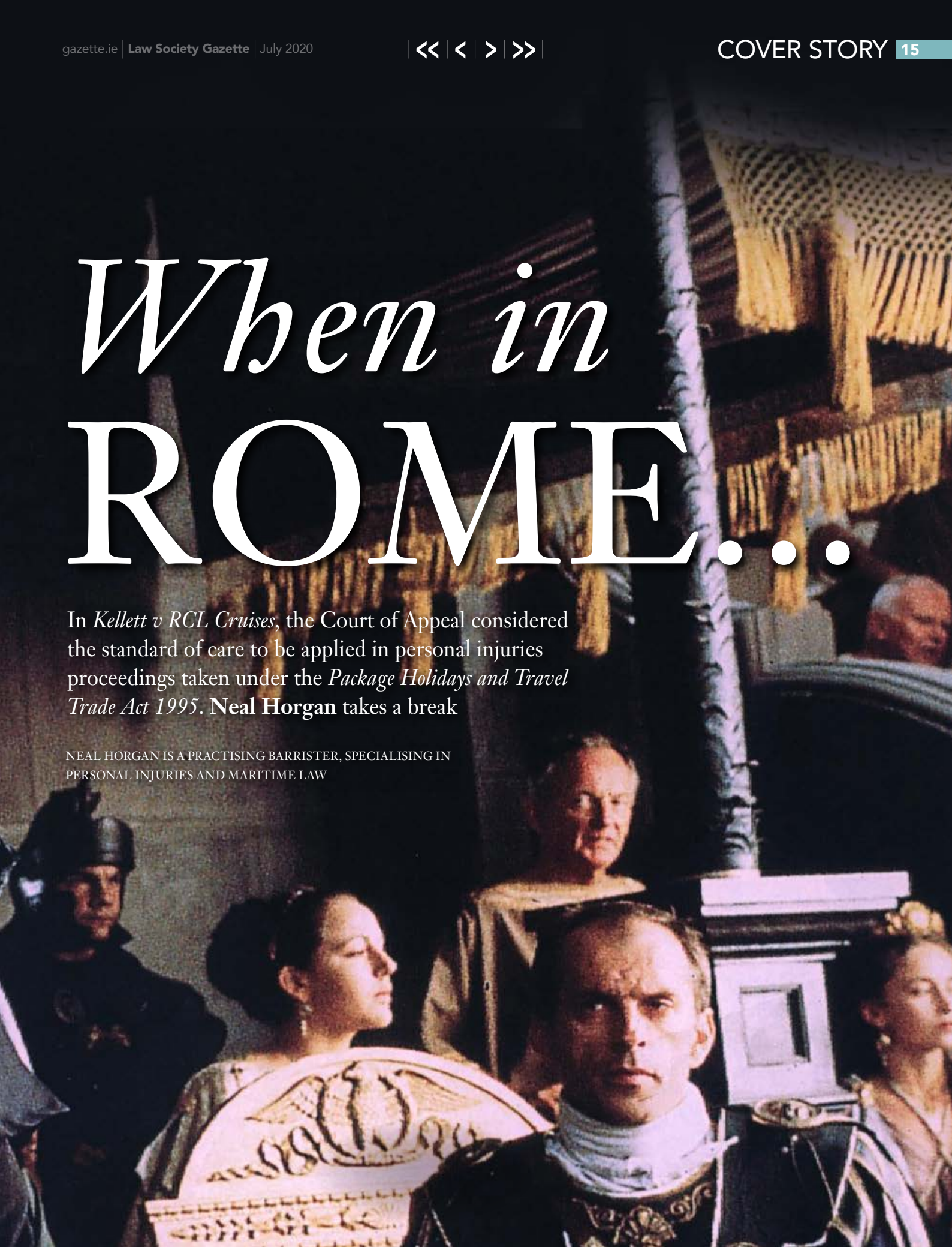
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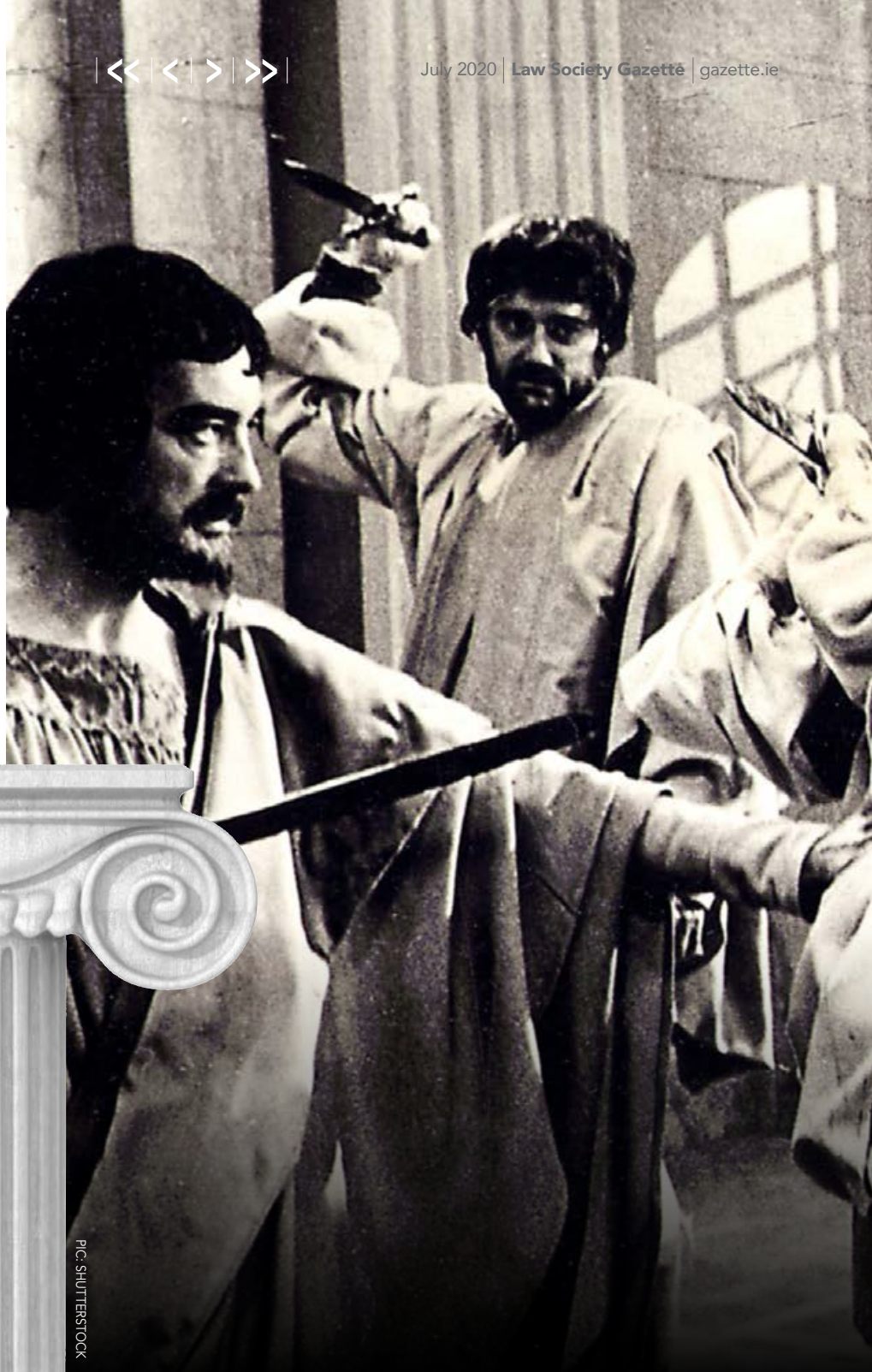
In *Kellett v RCL Cruises*, the Court of Appeal considered the standard of care to be applied in personal injuries proceedings taken under the *Package Holidays and Travel Trade Act 1995*. **Neal Horgan** takes a break

NEAL HORGAN IS A PRACTISING BARRISTER, SPECIALISING IN PERSONAL INJURIES AND MARITIME LAW



≡ AT A GLANCE

- The *Package Holiday and Travel Trade Act 1995* provides certain rights to holidaymakers
- Proceedings may be brought directly against the travel agent, rather than the foreign service provider
- Proceedings may be taken in the member state where the travel agent/organiser is established or where the plaintiff resides
- But which standard of care applies – that of the holiday location or of Ireland?



PICTURE: SHUTTERSTOCK

The *Package Holidays and Travel Trade Act 1995*, as amended, provides that a plaintiff who is injured while on holiday abroad has:

- The right to bring proceedings directly against the travel agent, rather than against the foreign service provider, and
- The right to take proceedings in the member state where the travel agent/organiser is established or where the plaintiff is resident.

A question that frequently arises in such cases is the standard of care to be applied. Is it the standard of care that applies in the holiday location or

A PRACTITIONER SHOULD BE VERY SLOW TO BRING PROCEEDINGS UNDER THE 1995 ACT WITHOUT ENQUIRING INTO, OR RESEARCHING, THE STANDARDS OR REGULATIONS THAT APPLY IN THE PLACE WHERE THE ACCIDENT OCCURRED

the standard that applies in Ireland? *Kellett v RCL Cruises Ltd and Others* answers this question.

Summertime blues

The plaintiff was on a cruise holiday and injured her arm while participating in a speedboat excursion – the ‘White Knuckle Jet Boat Thrill Ride’ – while the cruise ship was docked at St Maarten in the Caribbean.

The plaintiff contended that the speedboat was unsafe and dangerous, and issued proceedings in Ireland pursuant to section 20 of the 1995 act. This states: “The organiser shall be liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by the organiser, the retailer, or other suppliers of services, but this shall not affect any remedy or right of action which the organiser may

have against the retailer or those other suppliers of services.”

In the High Court, her engineer testified that the obligation rested on the excursion operator to ensure that the boat was safe for the vigorous manoeuvres that had led to the injury. He also gave evidence in relation to the lack of safety measures. In particular, he was critical of the actions of the skipper in moving the plaintiff after she had been thrown from her seat during the first

manoeuvre, which had not caused the injuries.

However, under cross-examination, he stated that he was unaware of the Irish regulations, or the local regulation or standards applicable in St Maarten for such boat trips. He also stated that he was unable to offer any evidence of the safety measures that should have been in place on any similar boat anywhere in the world, with the exception that he had once been on a boat on the Thames that had a side rail.

The defendants did not provide any evidence in relation to liability, and relied upon the failure of the plaintiff to adduce evidence in relation to local regulations or standards in St Maarten.

In the High Court, Barr J stated that the leading case was the decision of the Supreme Court in *Scaife v Falcon Leisure Group* (2007).

In *Scaife*, the plaintiff slipped and fell in a Spanish hotel restaurant while on holiday. The key issue was whether negligence had to be determined by reference to local standards or Irish standards. Macken J had reviewed the relevant case law and stated: “The conclusions to be drawn from all of the above cited cases are that, both before and after the coming into force of the directive and its transposition in national law, the established principle is that the organiser is not an insurer to the customer. The learned High Court judge correctly found that the hotel proprietor was not such an insurer under the legislation. The above cases also establish the principle that the test is not one of strict liability and, in that regard, I am satisfied that the High Court’s finding, when correctly read, was not that strict liability applied. The final principle

clearly established by those cases is that the standard by which the acts in question are to be judged is that of reasonable skill and care, which standard, if not expressed in a contract, will be readily implied into it.”

Holidays in the sun

Barr J then reviewed a number of British and Northern Irish cases, namely *Wilson v Best Travel Limited* (1993), *Gouldbourn v Balkan Holidays Limited* (2010), and *Kerr v Thomas Cook Tour Operations* (2015). He stated: “If it is established that the service provider complied with all relevant local regulations and standards, they and the organiser will not be liable in negligence or breach of contract to the consumer, unless it can be shown that such local standards were patently deficient, or were not in conformity with uniformly applicable regulation.”

Barr J criticised the failure of the plaintiff’s engineer to point to any standards or regulations in St Maarten or Ireland, or indeed elsewhere, that would have mandated the use of the safety features he proposed. He held that the onus of proof rested on the plaintiff to establish that the service provider did not provide the service in accordance with local regulations or standards, or in accordance with internationally recognised standards. He held that the plaintiff had not established what the local standards were, and whether there was a failure to comply with such standards.

Having identified this evidential deficit, Barr J proceeded to consider the case as if Irish standards applied: “In the circumstances, it is not necessary for me to determine whether the plaintiff could establish liability in the absence of any evidence as to the applicable standards in St Maarten. I am

satisfied that, even if one were to apply standards which may be thought applicable in this jurisdiction, one could still not find that the White Knuckle Jet Boat Thrill Ride was provided without reasonable skill and care as required by the *Scaife* judgment.”

Barr J concluded that the plaintiff had not established any negligence on the part of the defendants, or any liability under the 1995 act, and thereby dismissed the claim.

The passenger

The plaintiff appealed the decision. The Court of Appeal (Noonan, Haughton, and Collins JJ) dismissed the appeal. The leading judgment was delivered by Noonan J.

Noonan J held that Barr J had applied the correct test and set out a number of principles that – given their significance for future cases – are worth setting out in full:

- a) In claims pursuant to section 20 of the 1995 act, the appropriate test is whether reasonable skill and care have been employed in the provision of the service complained of.
- b) The standard by which the test of reasonable skill and care is to be judged is the standard, as distinct from the law, applying in the place where the event complained of occurs. The issue of liability is to be determined by reference to Irish law.
- c) If there are internationally recognised norms applicable to the facts of the case, the court is entitled to have regard to these in its assessment of whether reasonable skill and care have been used.
- d) Per *Scaife*, there may be cases where the court can have regard to the standards prescribed in Irish legislation, such as the

THE ONUS OF PROOF RESTED ON THE PLAINTIFF TO ESTABLISH THAT THE SERVICE PROVIDER DID NOT PROVIDE THE SERVICE IN ACCORDANCE WITH LOCAL REGULATIONS OR STANDARDS, OR IN ACCORDANCE WITH INTERNATIONALLY RECOGNISED STANDARDS



'What's new, pussycat? Oh-oh-aarrgh!'

- Hotel Proprietors Act 1963* and the *Occupiers Liability Act 1995*, in determining whether there has been compliance with the directive and the 1995 act.
- e) It will not necessarily be a defence to a claim to show that local regulations were complied with, if such are recognised locally as inadequate, or are so patently deficient that any reasonable person would view them as obviously inadequate; conversely, there may be a requirement to comply with local standards that are higher than those obtaining in this jurisdiction.
 - f) The tour operator is not to be regarded as an insurer.
 - g) The onus of proving that the relevant service has been provided without reasonable skill and care rests upon the plaintiff and, accordingly, it is for the plaintiff to establish that any relevant standard has not been complied with.
 - h) It will normally be difficult for the court to make an assessment of whether reasonable skill and care has been used in the provision of the service, absent evidence of relevant local standards, as distinct from Irish standards, subject to (d) above.
 - i) The court should not be overly prescriptive as to how compliance with local standards is to be proved. It is not necessarily the case that such proof can only be provided by a locally qualified expert, subject always to the rules of evidence and the relative weight to be attached to non-expert evidence, and

- j) The parties may, of course, expressly contract for the provision of a service to a particular standard, as the trial judge pointed out.”

Collins and Haughton JJ expressed some hesitancy in respect of Noonan J’s principle (b). In separate judgments, they stated that, in other factual circumstances, they would have sought a preliminary ruling from the CJEU on whether, to the extent that local regulations/standards are relevant, the onus of proving such regulations/standards should fall on the holidaymaker or on the organiser/retailer.

On the road again

Given the enormous number of Irish holidaymakers who travel abroad each year, this case is hugely significant. The decision makes clear that a practitioner should be very slow to bring proceedings under the 1995 act without enquiring into or researching the standards or regulations that apply in the place where the accident occurred.

At the conclusion of his judgment, Haughton J provides useful advice on the best approach that should be adopted by a prospective plaintiff’s legal team: “As matters stand, before pursuing a claim, plaintiffs and their lawyers and experts would be well advised to research holiday destination standards/regulations, in order to be prepared to establish breach of such local standards,

or at least to contest compliance with local standards asserted by a tour organiser as a defence, or alternatively, in order to criticise such standards or the manner in which they are applied or policed locally as being inadequate: they would, as has been observed, fail to do so at their peril.”

Q LOOK IT UP

CASES:

- *Gouldbourn v Balkan Holidays Limited and Anor* [2010] EWCA Civ 372
- *Kellett v RCL Cruises Ltd and Others* [2019] IEHC 408
- *Kellett v RCL Cruises Ltd and Others* [2020] IECA 138
- *Kerr v Thomas Cook Tour Operations Limited* [2015] NIQB 9
- *Scaife v Falcon Leisure Group (Overseas) Ltd* [2007] IESC 57; [2008] 2 IR 359
- *Wilson v Best Travel Limited* [1993] 1 All ER 353

LEGISLATION:

- Council Directive 90/314/EEC on package travel, package holidays and package tours
- *Package Holidays and Travel Trade Act 1995*

RACE TO THE FRONT

EMPLOYERS HAVE A POWERFUL TOOL TO PUSH BACK AGAINST RACISM BEING IMPOSED ON THEM BY CUSTOMERS, CLIENTS, THIRD PARTIES OR ANY OUTSIDE AGENTS – THE EMPLOYER OR SERVICE PROVIDER THEMSELVES WILL BE HELD DIRECTLY LIABLE FOR RACE DISCRIMINATION



≡ AT A GLANCE

- Lawyers will have an increased requirement to be aware of Irish law on the prohibition of discrimination on grounds of race
- The *Employment Equality Act* prohibits discrimination under nine grounds, one of which is race, and the *Equal Status Act* prohibits such discrimination in the access to goods and the provision of services, including housing and education
- The EU *Race Directive* gives strong protection against discrimination, including that imposed because of third-party concerns.

The *Employment Equality* and *Equal Status Acts* provide protections from racial discrimination to employees and to non-employees who are accessing goods and services, and place obligations on employers and service providers. **Katherine McVeigh** and **Cliona Kimber** refuse to sit at the back

KATHERINE MCVEIGH IS A PRACTISING BARRISTER, SPECIALISING IN LABOUR AND EMPLOYMENT LAW. CLIONA KIMBER SC SPECIALISES IN EMPLOYMENT AND EQUALITY LAW AND IS CO-AUTHOR OF *EMPLOYMENT EQUALITY LAW*

The issue of racism is highly topical now. The Workplace Relations Commission (WRC) 2019 [annual report](#) recently noted that discrimination on grounds of race under the *Equal Status Acts 2000-2018* is still the most frequent complaint submitted of the nine discriminatory grounds.

The number of overall complaints submitted under these acts decreased by 25% in 2019 compared with 2018. This raises a question about the level of awareness in Irish society of the panoply of rights for those discriminated against, and also for those wishing to oppose racism practised by others. Accordingly, the WRC has pledged to commence a 2020 awareness-raising campaign.

As practitioners will be aware, Irish law is interpreted in line with EU law. This creates a level playing field across member states. The *Employment Equality Acts 1998-2015* (EEA) and the *Equal Status Acts 2000-2018* (ESA) are to be understood against the backdrop of the *EU Race Directive*.



THE EMPLOYER COULD SIMPLY REMIND THE CUSTOMER OR CLIENT THAT THIS IS A CRIMINAL OFFENCE IN WHICH THE EMPLOYER DOES NOT WANT TO BE COMPLICIT ... FAILING TO STAND UP TO RACIST PRACTICES OF CUSTOMERS MAY COST A COMPANY DEARLY

The directive (2000/43/EC) is not a complete body of rights and contains basic prohibitions on discrimination on grounds of race or ethnic origin. It has since been interpreted by the CJEU to give strong protection against discrimination, including that imposed because of third-party concerns.

The 2008 ECJ case of *Firma Feryn NV* (Case C-54/07) arose from the refusal of a company in the Netherlands specialising in garage-door installation to employ persons of ethnic origin. When challenged, the company stated that their policy was due to their customers' reluctance to give such employees access to their homes. The court rejected the argument of the company and held that their actions constituted direct discrimination in relation to recruitment under the directive.

What employers and service providers can learn from this is that there is a powerful

tool to push back against racism being imposed on them by customers, clients, third parties or any outside agents – the employer or service provider themselves will be held directly liable for race discrimination. It is important to be cognisant of this responsibility.

Meaning of 'race'

It is extremely important to be aware that the reach of Irish law is significantly broader than the *Race Directive*. The directive expressly provides that it does not cover "difference of treatment based on nationality", and this is expressly covered in Irish law.

The directive does not attempt to define 'race', 'colour' or 'ethnic origins', and leaves it up to member states to define these terms. As such, the Labour Court has frequently adopted the definition of race from British case law.

In *Mandla (Sewa Singh) v Dowell Lee* (1983), the House of Lords held that

'ethnic' – which it held was associated with a cultural and historical background – was wider than 'racial' (which constituted a biological element). The Labour Court, in *Dublin Institute of Technology v Awojola* (EDA 35/2013), adopted the definition set out in *Mandla* and held that persons of the European Union did not have the characteristics of a racial group.

Discrimination in Irish law

The *Employment Equality Act* prohibits discrimination under nine grounds, one of which is race. Employers may not discriminate against employees or potential employees with regard to access to employment, conditions of employment, work experience, and promotion. It is perhaps less well-known that the EEA also prohibits:

- Discrimination in collective agreements with regard to access to and conditions of employment and equal pay for like work,
- Discriminatory advertising,
- Discrimination by employment agencies,
- Discrimination in the provision of vocational training, and
- Discrimination by trade unions, professional, and trade associations as regards membership and other benefits.

The *Equal Status Act* prohibits such discrimination in the access to goods and the provision of services, including housing and education. The ESA prohibits discrimination in the provision of accommodation services against people who are in receipt of rent supplement, housing assistance, or social-welfare payments. Discriminatory advertising is also prohibited.





PIC: ALAMY.COM

Both acts provide that discrimination on grounds of race occurs where, as between two persons, the discriminatory grounds are “that they are of different race, colour, nationality or ethnic or national origins” (section 6(2)(h) of the EEA; section 3(2)(h) of the ESA).

Discrimination has a specific meaning in equality law. The definition of discrimination focuses on whether a person has been treated less favourably in the workplace than another person in a similar situation on any of the nine grounds, including race.

Discrimination can be direct or indirect. While direct discrimination is often more obvious, indirect discrimination has a negative impact on employers or persons accessing goods and services. Indirect discrimination may occur if an organisation’s policy or practice, which is applied to all persons, has the effect of putting an employee or someone attempting to avail of a good or service at a disadvantage because of their race or ethnic origin. For example, if an employer requests three references from Irish employers, this could indirectly discriminate against an immigrant (*Czerski v Ice Group*). Or if employers furnish documentation, including

contracts of employment and policies in English only, rather than in a language that is understandable to all employees (*Complainants v Goode Concrete Ltd*).

Objective justification

If a complainant satisfies a *prima facie* case of discrimination, the burden shifts to a respondent to demonstrate that the discrimination is objectively justified by a legitimate aim, and that the means of achieving that aim were appropriate and necessary.

THE HOUSE OF LORDS HELD THAT ‘ETHNIC’ – WHICH IT HELD WAS ASSOCIATED WITH A CULTURAL AND HISTORICAL BACKGROUND – WAS WIDER THAN ‘RACIAL’ (WHICH CONSTITUTED A BIOLOGICAL ELEMENT)

The burden on a respondent to objectively justify such treatment is onerous. In *A (on behalf of her daughter B) v A Girls Secondary School*, the Equality Tribunal, as it then was, stressed the importance of providing evidence of objective justification. Although the respondent succeeded in convincing the tribunal that their policies were legitimate, it failed to provide evidence demonstrating necessity.

Although burdensome, objective justification is not an impossible task. In *Turner v Basketball Ireland*, a professional

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basketball player alleged discrimination on grounds of race within the league. The WRC found that, although the complainant had established a *prima facie* case of discrimination on grounds of race, the respondent had objectively justified the difference in such treatment. The WRC held that the ESA allows for differences in the treatment of persons based on nationality that are “reasonably necessary, having regard to the nature of the facility or event and are relevant to the purpose of the facility or event”.

Vicarious liability

The EEA makes an employer liable for acts carried out by a person in the course of employment, whether or not an employer knew or consented (section 15). This includes acts by a person acting as agent for another person with express or implied authority.

Employers can defend such claims if it is demonstrated that steps were taken as reasonably practicable to prevent the employee from doing the act in question or from doing it in the course of employment.

Employers should have policies and practices in place prohibiting race discrimination, emphasise to the workforce that it will not be tolerated, and have an effective complaints mechanism. *Dublin Bus v Camley* demonstrates how best practices of an employer allowed them to defend against the rogue employee’s actions in insulting another worker on social media.

Service-provider duties

Similar to the EEA, the ESA provides that procurement of discrimination is an offence (section 13) and that service providers are prohibited from publishing or displaying discriminatory advertisements (section 12).

Section 42 of the ESA (also at section 15 of the EEA) relates to vicarious liability, and was examined in 2019 in *Irish Human Rights Commission v DAFT*. The respondent’s defence that it was a “mere conduit” and not the author of an online advertisement was rejected by the WRC. The respondent was held vicariously liable for the content on its online platform and was ordered to cease publishing and develop a process to identify, monitor and block discriminatory advertising on its website.

The significant recent decision by the High Court in *Smith v Office of the Ombudsman* centred on section 5 of the

ESA, which prohibits discrimination in the disposal of goods and provision of services. The case arose from a decision of the Legal Aid Board to refuse the appellant a legal-aid certificate. Mr Justice Simons, in dismissing the appeal, applied the following test: “The question for determination upon a *claim of racial discrimination* – as opposed to, for example, an application for judicial review – is not whether the procedure ... is subjectively fair, but rather whether the procedure applied to [the appellant] differed from the approach applied to other complainants generally.”

The court held that the appellant had “misunderstood the concept of a comparator” under the ESA, and held that “the correct comparison is not as between the complainant and the person providing the service, but rather as between the complainant and another service recipient”. Crucially, the judge held that section 5 is “not a stand-alone provision” and “must be read in conjunction with section 3 (general discrimination) and/or section 4 (discrimination on disability grounds)”.

In *Asylum Seeker v Statutory Body* (January 2020), the WRC found that the complainant was indirectly discriminated against on grounds of race during her application for a learner driver permit. The complainant, an asylum seeker, had been refused the permit due to the lack of valid evidence of residency entitlement. The WRC made various stringent orders, including that the respondent must “immediately amend the 2018 guidelines”.

Criminal offence

It is worth noting that it is a criminal offence for a person to procure or attempt to procure another person to do anything that constitutes discrimination or victimisation (section 13 of ESA). While there have been no cases to date that we are aware of, this provision should not be overlooked in the heightened awareness of current times.

Indeed, the provision could, in fact, assist an employer put under pressure by a customer or client to send only ‘national’ workers – as in the *Firma Freyn* case. The employer could simply remind the customer or client that this is a criminal offence in which the employer does not want to be complicit.

There are a range of legal protections afforded to both employees and non-employees to prevent discrimination on

grounds of race. While legal practitioners will be familiar with prohibitions on overt racism, they can advise their clients on the issues they may be less familiar with regarding obligations on employers and service providers.

Employers and service providers might fail to appreciate the risk of liability for attempts by third parties and ‘rogue’ employees to engage in racism unless they have good policies and training in place. As the CJEU has made clear, failing to stand up to racist practices of customers may cost a company dearly.

With the increased spotlight on race discrimination, legal practitioners will have an increased requirement to be aware of Irish law on the prohibition of discrimination on grounds of race. [E](#)

LOOK IT UP

CASES:

- *A (on behalf of her daughter B) v A Girls Secondary School* (DEC-S/2015/001)
- *Asylum Seeker v Statutory Body* (ADJ-00020743; 28 January 2020)
- *Complainants v Goode Concrete Ltd* (DEC-2008-020)
- *Czerski v Ice Group Business Services Limited* (DEC-E/2006/027; [2010] ELR 8)
- *Dublin Bus v Camley* (EDA164; Labour Court, 18 February 2016)
- *Firma Feryn NV* (Case C-54/07)
- *Irish Human Rights Commission v DAFT* (ADJ-00005960; 6 August 2019)
- *Mandla (Sewa Singh) v Dowell Lee* [1983] 2 AC 548
- *Smith v Office of the Ombudsman and Ors* [2020] IEHC 51
- *Turner v Basketball Ireland* (DEC-2014-029)

LEGISLATION

- *Council Directive 2000/43/EC* of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- *Employment Equality Acts 1998-2015*
- *Equal Status Acts 2000-2018*

Addressing the fixed cost of rent will be key for many commercial tenants as they move to trade out of the crisis caused by the COVID pandemic. It's the lease that can be done, says **Alan O'Connor**

ALAN O'CONNOR IS A PRACTISING BARRISTER

DOWN-PAYMENT BLUES

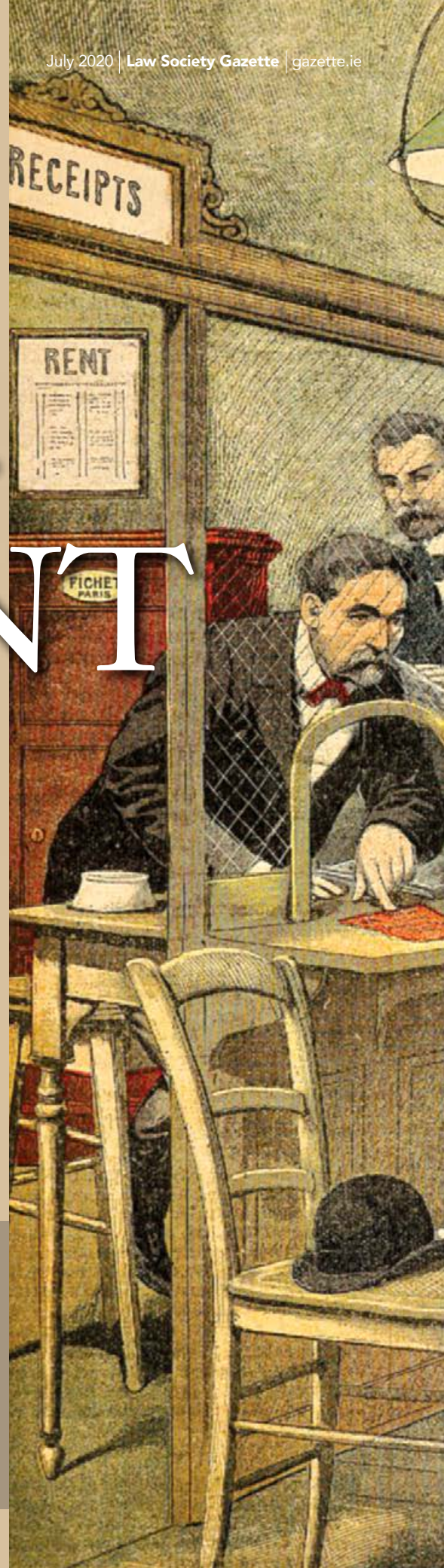
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COVID crisis has had an unprecedented impact on the Irish economy, large sections of which were effectively put on ice by restrictions imposed to protect public health.

Although unable to trade, rent will have continued to fall due for many affected businesses. As Ireland reopens, many businesses will be weighed

≡ AT A GLANCE

- With market rents expected to fall in the wake of the pandemic, market-linked rent-review clauses may prove a useful tool for some tenants to cut their rent liability
- The principles for determining rent and the procedure for carrying out the review are governed by the lease
- Apart from the law affecting upwards-only clauses, the operation of commercial rent-review clauses is a matter of contract, so each lease must be considered individually





down by arrears of rent accrued during the lockdown, and by rents that are disconnected from the profitability of premises with reduced capacity, due to social-distancing rules.

Back in business

With market rents expected to fall in the wake of the pandemic, market-linked rent-review clauses may prove a useful tool for some tenants to cut their rent liability. This option was not available for most tenants during the last financial crisis, as most leases included ratcheted ‘upwards-only’ rent-review clauses.

However, since the commencement of section 132 of the *Land and Conveyancing Law Reform Act 2009* on 28 February 2010, any rent-review clause in a new lease must allow for downward reviews. It is important to note that section 132 does not apply to leases executed on foot of agreements for lease entered into before 28 February 2010.

As the in-built mechanism for varying the amount of rent payable under a lease, rent-review clauses have several advantages over *ad hoc* arrangements. The principles for determining rent, and the procedure for carrying out the review, are governed by the lease. So, if a review can be triggered, the tenant will not have to hope for their landlord’s beneficence to obtain a reduction, and the level of rent set will not depend on the parties’ respective bargaining power. Leases typically provide for rent to be set by arbitration or expert determination in default of agreement. An added advantage is that the rent set on review will be payable until the next review date (most often in five years’ time) – potentially locking in a low rent for a

longer period than a landlord might agree as an abatement.

However, there are limitations to relying on rent-review provisions to seek a rent reduction. Many new leases only allow a rent review to be triggered by the landlord. Often, such clauses were inserted precisely to stop a tenant from benefiting from a downwards review in the event of a market slump. If such a clause is present, the tenant will not be able to benefit from a review, unless they can convince the landlord to trigger one.

A further difficulty lies with the rigidity of rent-review clauses, which typically can only be triggered at specific dates (although, normally, time is not of the essence, so a review can be triggered after the review date – see *Hynes Ltd v Independent Newspapers*). Normally, the new rent is to be measured by reference to market rent on the specified review date, so if that date occurred before the crisis, the tenant may not benefit from triggering a review.

Apart from the law affecting upwards-only clauses, the operation of commercial rent-review clauses is a matter of contract, so each lease must be considered individually, and valuation advice sought, to determine whether a tenant can benefit from seeking a rent review.

Outside of rent-review provisions, the parties to a lease may agree to vary rent obligations to ease the financial pressure on a tenant. Such arrangements have the benefit of flexibility, as the parties can tailor the terms to the particular commercial circumstances facing them – but doing so requires agreement.


While the instincts of many landlords and tenants may be to put in place informal arrangements to maximise flexibility and minimise the costs involved with formal agreements being drawn up, the experience in the years following the financial crisis shows that informal arrangements can cause headaches down the line for landlords and tenants, as such arrangements often lack certainty as to their enforceability, duration and precise terms.

When putting in place such an arrangement, care should therefore be taken to ensure that any agreement is legally enforceable and is clear in its effect from beginning to end.

Money talks

The primary requirements for an enforceable agreement to vary the rent payable by a tenant are the same as those for any enforceable contract – capacity, offer, acceptance, intention to create legal relations, and consideration. To the extent that such an agreement constitutes a variation of a lease, section 51 of the *Land and Conveyancing Law Reform Act 2009* also requires that the agreement be evidenced in writing.

Consideration poses a difficulty for rent-abatement agreements, as the rule in *Pimel’s Case* will normally prevent the commitment to pay a reduced rent from being treated as consideration for the reduction, as in *Barge Inn v Quinn Hospitality* (2013). In order to be effective, such agreements should contain a clear collateral advantage for the landlord (such as the tenant giving up rights or taking on an additional obligation – as in *Westpark Investments v Leisureworld* (2012), where the tenant gave up rights to parking spaces) to



FOR OLDER LEASES CONTAINING UPWARDS-ONLY REVIEW CLAUSES, CONSIDERATION SHOULD BE GIVEN AS TO WHETHER THE UPWARDS-ONLY PROVISION IS TIED TO THE AMOUNT SET AT THE PREVIOUS REVIEW OR THE AMOUNT PAYABLE IMMEDIATELY PRIOR TO THE REVIEW DATE

constitute consideration for the reduction in rent, or be executed under seal to dispense with the need for consideration. Where a collateral advantage is being relied on as constituting consideration for the rent reduction, it should appear on the face of the agreement – a tenant cannot normally rely on something not mentioned as constituting consideration: see *Harrabill v Swaine* (2015).

In relation to the requirement for writing, a concluded agreement for a rent abatement that has not been evidenced in writing may still be enforceable if it is supported by part performance. However, rent-abatement agreements may face particular practical difficulties in showing sufficient part performance, unless the agreement requires significant acts on the part of the tenant as consideration for the rent reduction.

In the absence of consideration or an agreement under seal, a tenant may be able to fall back on promissory estoppel where they have relied upon a clear representation by the landlord in relation to rent. While there is insufficient space in this article to consider the principles of promissory estoppel in detail, they are helpfully summarised by Laffoy J in the *Barge Inn* case as “(a) the pre-existing legal relationship between the parties; (b) an unambiguous representation; (c) reliance by the promisee (and possible detriment); (d) some element of unfairness and unconscionability; (e) that the estoppel is being used not as a cause of action, but as a defence; and (f) that the remedy is a matter for the court.”

Shake your foundations

In the *Barge Inn* case, the tenant had invested money, time, and effort in a licensed premises, in reliance on a representation that a rent reduction would continue while the tenant's business was affected by the prevailing economic circumstances. Laffoy J determined that the equities in the case required the landlord to be restrained from withdrawing the rent abatement while the business continued to be adversely affected by prevailing economic circumstances in the same manner as when the abatement was granted.

The *Barge Inn* case should be viewed as a cautionary tale by both landlords and tenants. It illustrates how informal rent-abatement arrangements may give rise to significant uncertainty, both as to whether the parties' legal obligations have been varied, and to what extent.



Such effects can last long after the representations on foot of which they arise, especially where they resulted in a significant change of position by the other party. Tenants will take note of Laffoy J's comments on the difficulty of determining how the doctrine applies in the various circumstances that arise and that, in the absence of a significant change of position, a concession made by way of a representation can be withdrawn by reasonable notice. These factors should encourage parties to formalise their arrangements.

Beating around the bush


Clear drafting is key to avoiding uncertainty in future. There are many ways a rent abatement can be structured, but there are some matters that any rent variation agreement should cover.

First, how the obligation to pay rent is being altered should be clearly described. How much will the tenant be obliged to pay? Is it to be a reduction in rent payable, writing-off of arrears, or a deferred due date for rent?

The duration of the arrangement, and the date for resumption of normal rent (or payment of deferred rent), should also be certain. Tying an abatement to economic conditions is best avoided, as the inherent uncertainty may lead to future disputes. If a fixed date is set, another abatement can always be agreed if economic difficulties persist, but at least the parties will know where they stand. Alternatively, restructuring the rent provision to link rent to tenant turnover or another performance metric can retain certainty, while allowing for a gradual uplift in rent as the tenant's business recovers.

Any agreement lasting until the next rent-review date should cover how the agreement will affect the next rent review – will the next review happen as normal, or will the new arrangement take its place? If the latter, what about the review after that?

For older leases containing upwards-only review clauses, consideration should be given as to whether the upwards-only provision is tied to the amount set at the previous review or the amount payable immediately prior to the review date. If the latter, the landlord should consider ending the abatement shortly before the next review date to ensure a higher floor for the next rent review.

If the payment of rent or any other tenant obligation is guaranteed by a third party, the landlord should take care to ensure that any allowance given to the tenant will not prejudice the enforceability of the guarantee. If the obligations of a tenant are varied without the consent of the guarantor, in a manner that could possibly be to the detriment of the guarantor, the guarantee will be discharged. While a simple reduction in the amount of rent that the tenant has to pay is unlikely to discharge the guarantee, other changes, such as deferring the tenant's liability, may release the guarantor, unless the guarantor consents to the change, either expressly or implicitly – for example, by his involvement in bringing about the variation (see *Danske Bank v McFadden*). The most straightforward way to avoid this risk is to have the guarantor co-sign the written agreement or to expressly consent to the variation in writing. 

LOOK IT UP

CASES:

- *Barge Inn v Quinn Hospitality* [2013] IEHC 387
- *Danske Bank A/S t/a National Irish Bank v McFadden* [2010] IEHC 116
- *Harrabill v Swaine* [2015] IECA 36
- *Hynes Ltd v Independent Newspapers* [1980] IR 204
- *Westpark Investments v Leisureworld* [2012] IEHC 343

LEGISLATION:

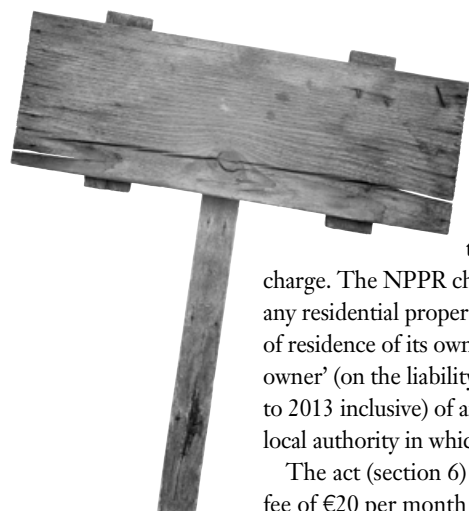
- *Land and Conveyancing Law Reform Act 2009*

≡ AT A GLANCE

- In order to affect registered land, a burden capable of registration under section 69 of the *Registration of Title Act 1964* must be registered on the folio
- The burdens capable of being registered under section 69 include any charge on the land duly created after the first registration of the land
- The other group of burdens (known as overriding interests) that affect registered land are what are commonly known as section 72 burdens – these are not capable of registration on the folio

How does the charge on property created by the *Local Government (Charges) Act* affect a purchaser for valuable consideration of registered land? **Joe Thomas** and **Ruth Cannon** report from the front lines

JOE THOMAS IS A SOLICITOR AND A MEMBER OF THE CONVEYANCING COMMITTEE. RUTH CANNON IS A PRACTISING BARRISTER



The *Local Government (Charges) Act 2009*, as amended, provided the legislative basis for the non-principal private residence (NPPR)

charge. The NPPR charge applied in the years 2009 to 2013 to any residential property that was not the sole or principal place of residence of its owner. The act imposed an obligation on 'the owner' (on the liability dates of 31 July 2009 and 31 March 2010 to 2013 inclusive) of an NPPR to pay a charge of €200 to the local authority in which the NPPR was located.

The act (section 6) further imposed a penal late payment fee of €20 per month in respect of non-payment of the charge.



HEAVY BURDEN



IN CIRCUMSTANCES WHERE THE VENDOR CLAIMED THAT THE CHARGE DID NOT APPLY, SOLICITORS WERE ADVISED TO SEEK SUCH CONFIRMATION BY WAY OF STATUTORY DECLARATION OF THE VENDOR

Section 7 provided that any charge or late payment fee due, and unpaid by the owner of an NPPR, be a charge on the property to which it related. Section 8 provided that local authorities issue certificates of the amount paid, which a vendor of an NPPR could provide to a purchaser as evidence that there was no charge as prescribed in section 7 affecting the NPPR.

On 28 August 2009, the Law Society's Conveyancing Committee issued a practice note advising that, on the purchase of an NPPR, solicitors should seek a receipt for payment of the charge and/or a letter of discharge of the charge. In circumstances where the vendor claimed that the charge did not apply, solicitors were advised to seek such confirmation by way of statutory declaration of the vendor. The 2009 act did not make any provision for the issuing of certificates in circumstances where the property was not an NPPR.

Amendment

Section 8 of the 2009 act was amended by the provisions of section 19 of the *Local Government (Household Charge) Act 2011* by the insertion of section 8A(4) into the 2009 act. This amendment provided that, with effect from 1 January 2012, a vendor of a residential property furnish on or before completion of a sale to a purchaser (a) a certificate of discharge or (b) a certificate of exemption, as appropriate, in respect of each year in which a liability date fell since the date of the last sale of the property. This change caused considerable confusion for solicitors in circumstances where properties were acquired in the years 2009, 2010 and 2011 as, prior to 1 January

2012, it was not possible to obtain a certificate of exemption in respect of the property for any liability date.

This resulted in the Conveyancing Committee issuing a further practice note on 6 April 2018. This practice note advised the profession that, where there had been a sale of a property in the years 2009 to 2011 inclusive, and the then vendor had furnished a statutory declaration that the property was his sole or main residence and was, accordingly, exempt from the charge, that, absent any reason to doubt the validity of the vendor's declaration, a purchaser should be entitled to rely on this declaration and to seek a certificate of exemption or discharge, as appropriate, in respect of the liability dates from the last sale.

Unfortunately, in very many instances of a sale of a residential property in the years 2009, 2010 and 2011 that was exempt from the charge by reason of being the vendor's sole or main residence, no statutory declaration confirming the position was furnished on the closing of the sale. Solicitors for vendors of properties that were acquired in the years 2009 to 2011 inclusive continue to have to go back to the solicitor, who acted for the vendor to their client, to see if either a statutory declaration confirming the position or a certificate of exemption can be obtained. This is often simply not possible, as the vendor who sold the property in 2009, 2010 or 2011 may be deceased, may have emigrated, or may simply be unwilling to cooperate.

Many solicitors have, consequently, paid the charge and the late payment fee of up to €7,230 out of their own pockets. This payment is, in many instances, made in respect of properties

that were exempt, but the necessary evidence was/is simply not available, and a purchaser's solicitor is concerned – since, if there was a liability and it was not discharged, it is stated to be a charge on the property. Given that local authorities have no information as to whether or not a residential property was someone's sole or principal residence on the liability dates 2009 to 2013 inclusive, the reality is that the solicitors' profession has policed and enforced the legislation.

Difficulties for solicitors have been exacerbated by disparities in the requirements of different local authorities on applications for certificates of exemption. Some local authorities will accept a copy folio showing ownership covering the requisite liability dates, together with an affidavit from an owner stating that the property was his sole or principal residence. Others require, in addition, evidence such as utility bills, which are now some 11 years old.

Registered land

A question arises as to how the charge on property created by section 7 of the 2009 act affects a purchaser for valuable consideration of registered land?

There are two groups of burdens that may affect registered land. Section 69 of the *Registration of Title Act 1964* lists the matters that may be registered as burdens on registered land. Importantly, in order to affect registered land on a sale for valuable consideration, a burden capable of registration under section 69 must,



SOLICITORS FOR VENDORS OF PROPERTIES THAT WERE ACQUIRED IN THE YEARS 2009 TO 2011 CONTINUE TO HAVE TO GO BACK TO THE SOLICITOR, WHO ACTED FOR THE VENDOR TO THEIR CLIENT, TO SEE IF EITHER A STATUTORY DECLARATION CONFIRMING THE POSITION OR A CERTIFICATE OF EXEMPTION CAN BE OBTAINED

in fact, be registered on the folio. The burdens capable of being registered under section 69 include, in section 69(1)(b), any charge on the land duly created after the first registration of the land. The other group of burdens that affect registered land are what are commonly known as section 72 burdens. These burdens, known as overriding interests, are set out in section 72 of the 1964 act and affect registered land without registration. Section 72 burdens are not capable of registration on the folio.

Insofar as section 69 burdens are concerned, the 2012 case of *Roche v Leacy* is illustrative. In this case, Laffoy J looked at the effect on a sale of registered land for valuable consideration of a *lis pendens*. A *lis pendens* is a burden capable of registration under section 69. In this case, the *lis pendens* was registered in the central office of the High Court, but was not, in fact, registered on the folio.

Laffoy J quoted section 52 of the 1964 act: “1) On the registration of a transferee of freehold land as full owner with an absolute title, the instrument of transfer shall operate as a conveyance by deed within the meaning of the *Conveyancing Acts*, and there shall be vested in the registered transferee an estate in fee simple in the land transferred, together with all implied or express rights, privileges and appurtenances belonging or appurtenant thereto, subject to (a) the burdens, if any, registered as affecting the land, and (b) the burdens to which, though not so registered, the land is subject by virtue of section 72, but shall be free from all other rights, including rights of the State.

“2) Where, however, the transfer is made without valuable consideration, it shall, so far as concerns the transferee and persons claiming under him otherwise than for valuable consideration, be subject to all unregistered rights subject to which the transferor held the land transferred.”

At paragraph 5.4 of her judgment, Laffoy J further stated: “While unregistered rights may be created over registered land, section 68(2) of the act of 1964 provides that all such rights shall be subject to the provisions of the act of 1964 with respect to registered transfers of land or charges for valuable consideration. This is consistent with subsection (2) of section 52, which provides that, where the transfer is made ‘without valuable consideration’, it shall



THERE IS NO PROVISION IN THE 2009 ACT STATING THAT THE CHARGE CREATED THEREBY IS AN OVERRIDING INTEREST

be subject to all unregistered rights subject to which the transferor had held the lands transferred.”

Section 72 lists the burdens to which registered land is subject without registration. This includes, in section 72(1)(a), estate duty and succession duty. Importantly, in the context of NPPR, the category of burdens that affect registered land without registration was expanded to include taxes such as gift tax, inheritance tax and, at a later date, farm tax. In contrast to these other statutory provisions, there is no specific statement in section 72 that the NPPR charge is an overriding interest for the purposes of section 72.

Section 31(1) of the 1964 act provides further that the register is conclusive evidence of ownership and shall not (in the absence of fraud) be “in any way affected in consequence of such owner having notice of any deed, document, or matter relating to the land”.

Wylie’s *Irish Land Law* (fifth edition) states that section 31(1) “in effect abrogates the doctrine of notice with respect to registered land, at least to the extent that a purchaser for value who becomes registered as new owner of the land is not affected by notice of anything not appearing on the register, unless it is a burden affecting registered land without registration”.


Deeney’s *Registration of Deeds and Title in Ireland* (first edition) states that the conclusiveness provided for in section 31(1) “abrogates the equitable doctrine of notice (express or constructive) in relation to registered land ... the equitable doctrine of notice (express or implied) is excluded in

relation to dealings with registered land. The only form of notice recognised is by entry on the register.”

Argument to be made

The 2009 act falls to be read in conjunction with the well-established provisions of the *Registration of Title Act 1964* set out above, which specifically provide that a purchaser takes free of any interests other than overriding interests, even if they have actual notice of them. There is no provision in the 2009 act, as amended, stating that the charge created thereby is an overriding interest. Such charge would appear to be an interest capable of being registered under section 69, which, in order to affect the land, must be registered.

There is a very real argument that a purchaser of registered land may, by reason of the absence of any provision in the 2009 act specifically declaring the charge created by that act to be a section 72 burden, succeed in taking free of an NPPR charge not registered on the folio at the date of their application for registration.

Solicitors should carefully review the law and come to their own conclusions. 

LOOK IT UP

CASES:

- *Roche v Leacy* [2012] IEHC 96

LEGISLATION:

- *Local Government (Charges) Act 2009*
- *Local Government (Household Charge) Act 2011*
- *Registration of Title Act 1964*

PARENT COMPANY

☰ AT A GLANCE

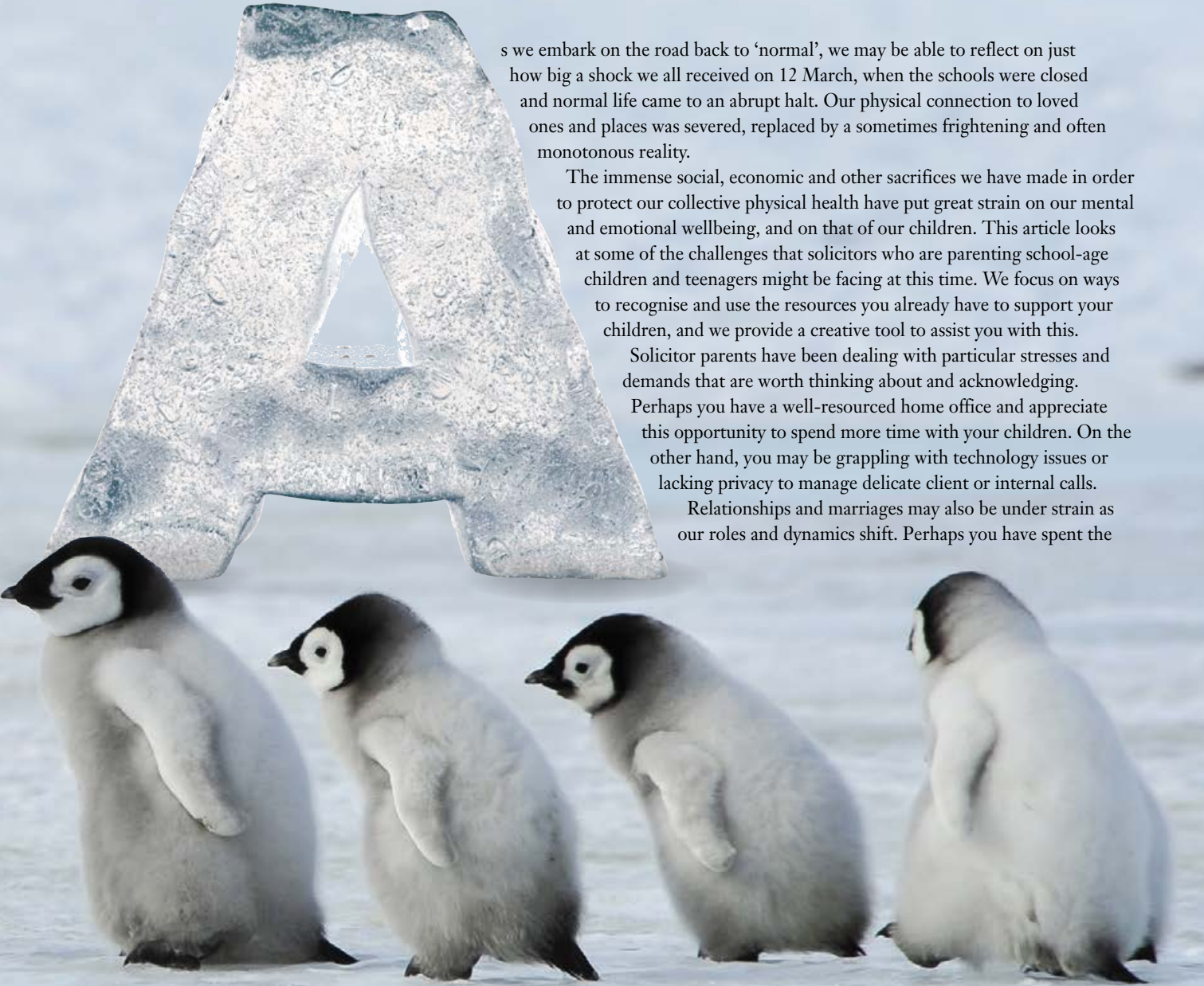
- Solicitors are facing difficult work and parenting challenges during the current pandemic
- While 'parenting' both clients and children, you need to look out for yourself
- The attitude of parents to the pandemic has a direct correlation to that of their children
- Spending time outdoors each day is fundamental to positive mental health
- Use the 'Tree of Life' exercise to map out your strengths and look to the future with hope

PIG: SHUTTERSTOCK



How are you coping with working and parenting in a pandemic? **Trish Howard** and **Louise Gartland** call ‘time-out’ to take stock and enjoy some artistic creativity to explore our emotions

TRISH HOWARD IS A PSYCHOTHERAPIST WHO WORKS IN THE LAW SCHOOL AND IN PRIVATE PRACTICE. LOUISE GARTLAND IS DIRECTOR OF THE ARTONOMY ART PSYCHOTHERAPY CENTRE IN DUBLIN AND VICE-CHAIR OF THE IRISH ASSOCIATION OF CREATIVE ARTS THERAPISTS



As we embark on the road back to ‘normal’, we may be able to reflect on just how big a shock we all received on 12 March, when the schools were closed and normal life came to an abrupt halt. Our physical connection to loved ones and places was severed, replaced by a sometimes frightening and often monotonous reality.

The immense social, economic and other sacrifices we have made in order to protect our collective physical health have put great strain on our mental and emotional wellbeing, and on that of our children. This article looks at some of the challenges that solicitors who are parenting school-age children and teenagers might be facing at this time. We focus on ways to recognise and use the resources you already have to support your children, and we provide a creative tool to assist you with this.

Solicitor parents have been dealing with particular stresses and demands that are worth thinking about and acknowledging.

Perhaps you have a well-resourced home office and appreciate this opportunity to spend more time with your children. On the other hand, you may be grappling with technology issues or lacking privacy to manage delicate client or internal calls.

Relationships and marriages may also be under strain as our roles and dynamics shift. Perhaps you have spent the



THIS MAY MEAN THAT, NOT ONLY ARE YOU ACTING AS A PARENT TO YOUR ACTUAL CHILDREN, YOU MAY BE ENCOUNTERING (UNCONSCIOUS) DEMANDS FROM CLIENTS TO PERFORM A PARENTAL, CALMING ROLE FOR THEM ALSO

Q FOCAL POINT

DREAM ON

The 'Tree of Life' exercise is simple and fun and allows us, through creativity, to explore our resources while being present with our children. Together, you can map out your strengths, the people who support you, and have fun looking to the future with hope. It is a marvellous opportunity to listen to ourselves and our children and reinforce the importance of listening to oneself. It can be done as a once-off or at intervals in our children's lives.

- *What you will need:* a sheet of paper/card and markers. Coloured pencils and pens are fine too.
- *Optional extras:* leaves and small twigs you've collected together on walks (and glue).
- *Setting ground rules:* have a think about what ground rules would work – for example, no such thing as wrong answers; no laughing at people's artistic ability.

Draw a tree

Without any other information, everyone draws a tree with four distinct parts:

- Roots,
- Trunk,
- Branches, and
- Foliage of any kind (fruit, flowers, leaves, etc).

Take as much time as you and your children need to draw this tree, using whatever colours and materials you and your child wish.

Write on the tree

When everyone has drawn the tree, it's time to write some words. We have suggested writing three items, but allow yourself and your child to write as many as you wish (younger children may need you to write for them):

- In the roots of your tree, write three things about the world you were *born into*.
- In the trunk of your tree, write in three of the *strengths* you have or three things you *like about yourself*.
- In the branches of your tree, write in the people who *hold you up/support you* in life. It's fine if those people are also from your past.
- In the foliage of your tree, write in your *hopes and dreams*.

If your child struggles to explore these items, you can ask them to describe the tree they've drawn, rather than themselves.

Discuss

Each person takes a turn to describe their tree and what they wrote from the roots to the tips. The object of the exercise is to open up new conversations with ourselves, with our children, and even between siblings. When listening to your children describing their tree, you can discover where they feel supported

and strong, and become aware of the areas that need more exploration and attention. For example, if a child struggles with naming their strengths or things they like about themselves, this is an incredible opportunity to explore those perceived deficits and ask how you can help.

Some children may struggle to complete the exercise, but don't worry if this is the case. There is evidence that the stress-related hormone, cortisol, lowers significantly after just 45 minutes of art creation. Whether we do a specific art exercise or something spontaneous, it has the effect of regulating us so that we can look at whatever is bothering us without the heightened panic, fear and anxiety attached to it.



last few months trying to complete work that requires intense concentration while trying to attend to – or home-school – your children, who are also facing huge emotional upheaval. When children need us, they quite rightly do not care about our deadlines, our clients or our careers.

While facing the challenges of working in this new environment, you are also interacting with clients similarly affected by the pandemic. Clients are possibly exerting considerable pressure on you to meet their demands, oblivious to or forgetting the fact that you are in a similar situation and working from home.

Solicitors occupy a position of influence in society, and also hold a symbolic authority. This may mean that not only are you acting as a parent to your actual children, you may be encountering (unconscious) demands from clients to perform a parental, calming role for them also. To be a source of certainty to others, when in fact you have as little certainty as anyone else, can take a toll.

Sweet emotion

On an emotional level, there is no right or wrong way to respond to a global pandemic, but it is useful to have a sense of how you and your children are coping. While there will be enjoyable aspects of this less frantic life, you and your children may be experiencing other intense emotions or feeling quite shut down and numb.

Some children are possibly dealing with loss, uncertainty, boredom and fear, just like their parents. Some are doing really well at home, but may need help processing emotions around the return to school and activities.

Understanding how we feel is important. When we can express our feelings, we can understand them and take steps to make changes if needed. Ignoring our feelings, particularly ones we don't like to admit to (for example, anger, fear, shame), can lead to reactive parenting and behaviour – for example, flying off the handle or engaging in power struggles with your children.

Toys in the attic

Although there are significant unknowns about how the world will look in the future, we do know what good mental health looks like. Many psychological theories (for example, attachment theory, polyvagal nerve



PICTURE: SHUTTERSTOCK

theory, and affect regulation) emphasise the importance of connection with others, and the role that being with others plays in our ability to regulate emotionally. It is also important to remember that children, in general, are astoundingly resilient and adaptable.

Our job as parents is to assist our children in understanding how they are feeling and to help them navigate their personal journey. The most effective way to do this is from a place of connection, with ourselves and our children. For this very reason it is essential to be intentional and fully present (putting the phone away) in the time we spend with them.

It is impossible to be fully present all day long, but we can create pockets of space for this. Giving time to our children, whereby we are wholly mentally and physically available to them, is a gift that helps them to feel important, wanted, loved, safe and steady, even in their moments of unsteadiness.

Sunshine

International research has recently determined two significant factors central to combating the negative effects of the pandemic for children. The first is that spending time outdoors every day is fundamentally important for maintaining positive mental health. So, go outside with your children as much as you can; collect some objects from nature to bring home, and use them to make art together. For those of you who are pressed for time, utilising the garden or your nearest green space can be highly beneficial.

The second finding of the research is that the attitude of parents to the pandemic has a direct correlation to the attitude of their children. Take time to think about where you are with all of this, mentally and emotionally. What do you need in order to feel calmer and more resourced? Before we can truly attend to our children, we must attend to ourselves. If you can face the coming months with a sense of calm, your children will take their cues from you. This does not mean you cannot have unsteady or anxious days. These experiences are universal and children need to know that it's okay to struggle. It is the managing of the unsteadiness and anxiety that counts. Consider a self-care practice of meditation, mindfulness, breathing or engaging in some counselling if you feel it would be helpful.

Children, through their play and their creativity, often have the answers to their problems, but they may not have learned to listen to or trust their own voices. Learning to really hear what they are telling us and to trust what they say can be uncomfortable, but extremely rewarding. Sometimes, our children may not have the language to describe how they are feeling; this is where an exercise like the one in the panel can be extremely useful. What cannot be said in words can be expressed symbolically, and we can 'hear' what our children are telling us, using different ears. This enables them to identify their own resources to thrive.

There are, of course, times when we simply do not feel that we or our children have what is needed to address some difficulties. That is okay. We are not all-knowing or all-powerful creatures. It is important to acknowledge this to ourselves and our children, and to be able to ask for help when it is needed.

If you have serious concerns about your own or your child's mental health, contact your GP or their school, who can direct you to further resources. You can also call LegalMind to speak to an independent mental-health professional who will talk through any issues you or your dependants may be facing. Find out more at www.lawsociety.ie/legalmind.

Also take a look at the Law Society's Professional Wellbeing Hub at www.lawsociety.ie/wellbeinghub to investigate other ways of supporting you and your children during COVID-19. [G](#)

WHO YA GONNA CALL?

Like all other legal businesses, town agents have been adversely affected by the lockdown. But as Valerie Peart points out, this vital service could be the saving grace for many law firms. **Mark McDermott** reports

MARK McDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*



ONE MEMBER OF OUR STAFF IN A COURT'S PUBLIC OFFICE OR IN A COURTROOM – REPRESENTING PERHAPS 15 DIFFERENT FIRMS – IS FAR BETTER THAN 15 PEOPLE FROM 15 DIFFERENT FIRMS, WITH ONE ITEM EACH REQUIRING ATTENTION

Town agencies have never been busier – at least, that was up to mid-March, when the pandemic hit. Ever popular with country law firms who require a Dublin-based agent to handle their administrative affairs in the capital, Pearts Solicitors and Town Agents on Ormond Quay has been, for many, the go-to agency.

Pearts has been in existence since 1883, with upwards of 800 firms on its books, which use them as their agent for a wide variety of services. Having taken over the business from her brother Michael, when he was appointed to the High Court in 2002, Valerie Peart is now the principal of the firm. She began working with her dad Denis

in 1974 while attending UCD, subsequently qualifying as a solicitor in 1980.

While the firm has deep roots, the town-agency service only began in the 1940s, when John R Peart, Valerie's grandfather, asked his newly qualified son Denis to start providing additional administrative services to several close colleagues. Denis saw the demand and grew the town-agency business from a small base of 20 clients.

"Firms look on us as an extension of their offices," says Valerie. "By using us, they have access to a further 30 or so staff who have the experience and knowledge they require, and on whom they have come to rely."

How has the agency side of the firm been coping since the shutdown? "Things were on the up – and then we started wondering where it was all going," she comments. "Then it struck us that it was a good time to put ourselves front and centre for people who might not have previously considered that they could use the help of an agent."

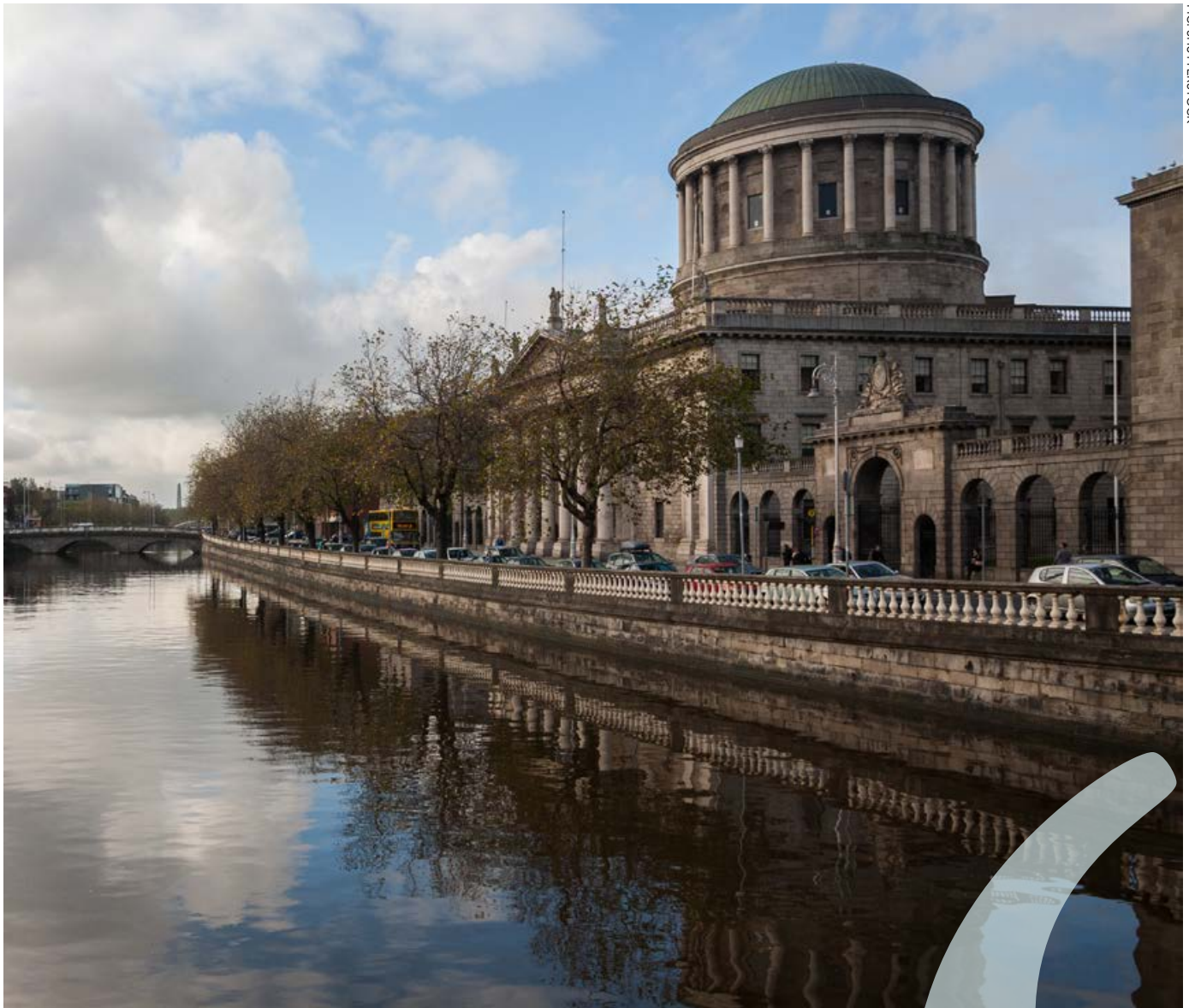
Under pressure

How are Pearts managing the crisis themselves – and for their clients?

"The coronavirus has created many challenges," Valerie admits. "At the very beginning, when things had closed down, we set



Valerie Peart, principal of Pearts Solicitors and Town Agents



PIC: SHUTTERSTOCK

up a dedicated telephone line that clients could call if they needed to ask us anything, or were looking for specific information. Our staff are highly experienced and had answers for the vast majority of questions. And, if not, then they knew who to ask. It's not that we have all the answers – but sometimes it's just knowing what to do with the question.”

She believes that town agents will become ever more significant for law firms who are now attempting to ‘prime their pumps’ once again.

“Given where Ireland is right

now and the new working restrictions, more than ever we believe that the town agent will be part of the solution, including for Dublin firms. One member of our staff in a court's public office or in a courtroom – representing perhaps 15 different firms – is far better than 15 people from 15 different firms, with one item each.

“Recent demand from Dublin-based practitioners, however, has made us look again at our own business model, leading to the decision to start expanding our town-agency services to firms in the capital,” she says.

End of the world as we know it

Pearls is no different from other law firms who are facing the challenges presented by the lockdown and the gradual return of their staff to the workplace. Like others, they have been re-arranging their offices, developing rotas for staff who need to continue working from both home and work offices, putting in place dual teams in case anyone catches the virus, and installing plastic shields, distance markers and hand sanitisers.

The reduced numbers in offices are putting pressure on firms

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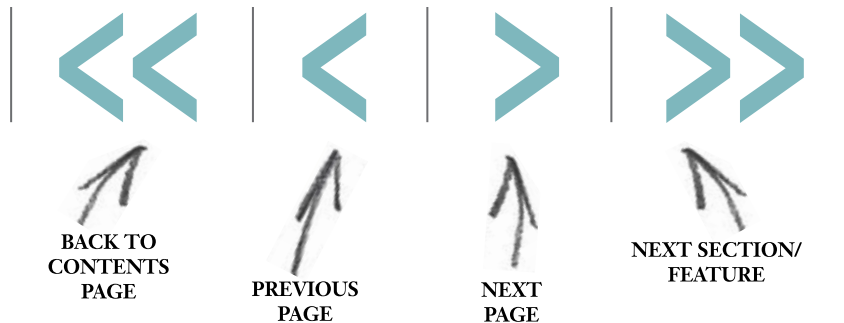
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who might not have the luxury of being able to release a staff member to attend the Central Office in order to deal with High Court and other superior court matters.

“We don’t fully know yet where the greatest need will arise, but we’re putting ourselves and our expertise at the service of our colleagues. Once law firms start reopening their offices, we believe that the demand for agency services will increase,” Valerie says.

Lone ranger

After an initial two-week closure in March to take stock of the situation and to deep-clean their premises and put safety protocols in place, Pearts reopened on 1 April, with minimum staff attending in Ormond Quay and some working from home, where possible. The firm had just one staff member attending the Four Courts on a daily basis.

“We were given one appointment per day lasting 15 minutes,” Valerie says. “We’ve now been allowed two 15-minute appointments, which is a positive development. These take place at different times of the day, but by appointment only, so we have

to manage the work. Though evolving every week, court attendance, at the moment, is also by appointment only.

“Cases being listed by appointment as opposed to the ‘normal’ list system has a certain advantage to it – you’re not waiting for long periods to be called out of a list of 30 or more.”

Currently, it’s a wait-and-see approach in terms of how the courts will operate their caseload. “Obviously, the Chief Justice will decide how matters develop, along with the presidents of the various courts,” she points out. “A sizeable backlog of cases has inevitably built up. Solicitors – and we also – are waiting to see what’s going to happen.”

It’s what you value

How cost-effective is the service that town agents like Pearts provide?


“First of all, ours is a good value-for-money service. Our clients are getting a highly professional service for a very reasonable outlay. A solicitor’s firm might send a staff member to do the same work – but that’s time out of the office. It’s much quicker for us to do that for them than for someone to have

to hop on the Luas, walk down the quays, queue at the central office, and then get back on the Luas again.

“When someone signs up with us, they get our terms and conditions, including our price list, so they know what the cost is going to be before they engage us.”

As solicitors attempt to reopen their offices, and given the unprecedented restrictions that will continue to have an impact on all law firms, Valerie expects to see a growing demand on town-agency services. “We carry out many of the routine tasks performed by solicitors. This allows fee earners more time to focus on their core legal work,” she says.

“As a solicitor firm, as well as a town agency, we can offer law firms the service of a solicitor to attend court and look after their clients. We can close sales, handle clients’ moneys, and we are subject to all the Law Society regulations that apply to every solicitor.

“Traditionally, interest in our services has been from firms outside of Dublin. Well, we think that Dublin firms are now rethinking how they are going to get things done in the current crisis – and we are ready, willing and able to help.” 

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GERMAN RULING A POTENTIAL THREAT TO EU LAW

When an EU member state rejects European Court of Justice rulings, what does this mean for the future of the Union, ask **Eimear Burke** and **Dearbhla Walsh**

EIMEAR BURKE IS A PARTNER AND DEARBHLA WALSH IS A TRAINEE AT FIELDFISHER



THESE CASES ILLUSTRATE WHAT MIGHT BE DESCRIBED AS A BUILDING TENSION BETWEEN THE CJEU AND SOME MEMBER STATES OVER ITS PERCEIVED LEGAL MICRO-MANAGEMENT OF MEMBER STATE LAWS

On 5 May, the German Federal Constitutional Court issued a judgment in which it declared a European Court of Justice (CJEU) decision *ultra vires* in Germany. The ruling focused on the legality of aspects of the European Central Bank's Public Sector Purchase Programme (PSPP). The legality of this programme had previously been referred to the CJEU, wherein it had been determined lawful.

The ruling has received widespread attention, as it poses a potentially fatal threat to the future of one of the main characteristics of the EU – namely, the principle of the supremacy of EU law over the national law of its member states.

Violated principles

In rejecting the CJEU ruling, the German court determined that the CJEU had violated principles of legal interpretation, and it further determined that the CJEU had failed to properly apply the EU's proportionality principle. In particular, the German court indicated that the CJEU had failed to ensure that the ECB applied its own proportionality analysis

when assessing the likely impact of its policies on both monetary and broader economic outcomes.

The court claimed that the CJEU's interpretation of the principle of proportionality in its judgment of 11 December 2018 “manifestly exceeds the judicial mandate conferred upon the CJEU in article 19(1)”, thus resulting in “a structurally significant shift in the order of competences, to the detriment of the member states”.

For this reason, the German court concluded that the CJEU's “aforementioned judgment thus constitutes an *ultra vires* act that is not binding upon the Federal Constitutional Court” (paragraph 163).

The German ruling is final, as it is not subject to appeal to any other court.

The European Commission responded to the German ruling, stating that, “notwithstanding the analysis of the detail of the German constitutional court's decision today, we reaffirm the primacy of EU law and the fact that the rulings of the European Court of Justice are binding on all national courts”.

Furthermore, the CJEU noted in a recent [press statement](#) that

it has always held that the legality of the acts of EU bodies can only be determined by the CJEU – and not national courts – in order to prevent the chaotic situation in which EU acts are legal in one member state, but not in another. The CJEU stated: “Divergences between courts of the member states as to the validity of such acts would indeed be liable to place in jeopardy the unity of the EU legal order and to detract from legal certainty. Like other authorities of the member states, national courts are required to ensure that EU law takes full effect. That is the only way of ensuring the equality of member states in the union they created.”

It is reasonable to anticipate that paragraph 163 of this ruling will become one of the most cited paragraphs in the analysis of the supremacy of EU law in the coming years.

Given the central role of Germany in the EU, the decision is a major blow from the heart of the union.

Czech decision

The German judgment is, however, not the first time that a



PICTURE: SHUTTERSTOCK

The Federal Constitutional Court is the supreme constitutional court for the Federal Republic of Germany

national court has found a CJEU judgment to be *ultra vires*, or at least concluded that it has no legal basis in domestic law. As far back as 31 January 2012, the Czech Constitutional Court declared the CJEU judgment in the *Landtová* case to be *ultra vires*, thus giving national law precedence over EU law.

This case concerned an alleged discriminatory pension scheme in the context of the breakup of Czechoslovakia into the Czech Republic and Slovakia. Part of the agreement reached in the context of that breakup provided that pensions would be determined by the state of residence of the employer at the time of the dissolution. This became problematic, as Slovak pensions remained significantly

lower than those in the Czech Republic, thus leading to a series of disputes.

In issuing its ruling on this case, the CJEU held that this scheme contravened EU law on the ground that it discriminated on the basis of nationality. In concluding that the decision of the CJEU was *ultra vires*, the Czech Constitutional Court ultimately found that the CJEU had overstepped the boundaries of the powers transferred to the EU by the Czech Republic. A core reason put forward by the Czech court was that the CJEU applied its principles to the dissolution agreement between the two countries.

On the surface, this judgment appeared to mark the beginning of member states displaying

domestic judicial defiance against the EU, in that never before had a member state taken such a radical step in a final national judgment.

Danish decision

The Supreme Court of Denmark reached a similarly controversial conclusion on 6 December 2016 in the *Dansk Industri* case.

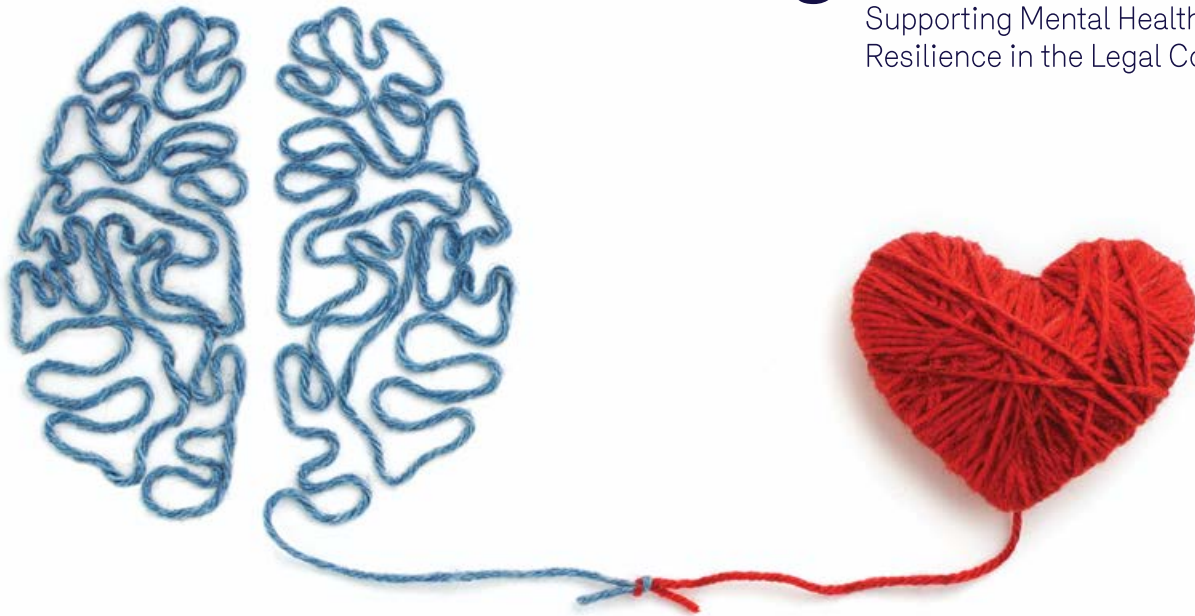
This case concerned a dispute between private parties, in which the claimant challenged the compatibility of a piece of Danish legislation with EU law, namely the EU principle of non-discrimination on grounds of age. The Danish legislation at issue provided that a severance allowance was not payable to dismissed employees when they were entitled to an old-age pension from

EVEN IN THE SHORT TIME SINCE THE DECISION OF THE GERMAN FEDERAL CONSTITUTIONAL COURT, THE HUNGARIAN GOVERNMENT HAS SOUGHT TO RELY ON THE RECENT UNCERTAINTY



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their employer and when the employee had joined the pension scheme before turning 50.

The CJEU ruled in this case that the Supreme Court of Denmark should interpret national law in light of [Directive 2000/78/EC](#), and further held that the Supreme Court of Denmark should “disapply any provision of national law which is contrary to the EU law”.

Despite the clear direction of the CJEU, the Supreme Court of Denmark used this occasion to set new boundaries to the applicability of the CJEU’s rulings in Denmark, ultimately refusing to set aside the conflicting provision of national law and thus providing national law with precedence over EU law. In doing this, the Supreme Court of Denmark concluded that the judge-made principles of EU law, such as the general principle of non-discrimination on grounds of age, were not binding, as they do not have their origin in a specific treaty provision.

Hungarian decision

Even in the short time since the decision of the German Federal Constitutional Court, the Hungarian government has sought to rely on the recent uncertainty that has arisen in the European legal order.

On 14 May 2020, the CJEU issued a judgment in relation to the treatment of asylum seekers being held in the transit zone at the Hungarian-Serbian border. This case concerned two asylum-seeking families who were being

held in the transit zone for 464 and 526 days respectively without being able to leave lawfully. The joint cases originated from preliminary ruling requests in December 2019, which led to the Hungarian Court asking the CJEU to rule on whether, among other questions, the above constitutes detention. The CJEU ruled that being held in a transit zone amounts to detention under EU law (namely [Directive 2013/33/EU](#)) and that such detention cannot extend beyond four weeks.

This CJEU judgment has received wide attention. It has been seen by many as a victory for all Hungarian citizens, as it strengthens protections against arbitrary detention and is likely to have a significant impact in terms of the upcoming discussions on the future of the European asylum system, due to the fact that it reinforces essential human rights and asylum safeguards.

However, the Hungarian prime minister has referred to the judgment as part of a ‘coordinated attack’ by the EU on Hungary. Significantly, the prime minister stated that, if the CJEU issues a judgment that conflicts with the Hungarian Constitution, then the constitution must have priority. This statement clearly echoes the recent judgment of the German court.


Nonetheless, despite the prime minister’s statement, the Hungarian Government subsequently announced on 21 May 2020 that, although the Hungarian government disagrees

with the CJEU, it will close the transit zone. Asylum seekers currently based in the transit zone will be transferred to alternative facilities within Hungary, namely asylum reception centres with varying degrees of increased permission to leave the centres, unlike the restriction of the transit zone.

The future

The final outcome in Hungary may appear, on the surface, to be a revalidation of the principles of European law. However, it may also be perceived as a strategic move by the Hungarian Government. This can be implied from a press conference on 21 May, during which the Hungarian Government celebrated (as a victory for Hungarian diplomacy) the fact that Hungary cannot be compelled by others to direct who gets to settle within their borders.

These cases illustrate what might be described as a building tension between the CJEU and some member states over its perceived legal micromanagement of member state laws.

It is clear that the cases of *Landtová* and *Dansk Industri* have not proven to be fatal to the EU legal architecture. It remains to be seen, however, whether the recent German ruling and the subsequent echoing of that ruling by the Hungarian Government will prove to be a more significant blow to the EU, or if they will merely join *Landtová* and *Dansk Industri* as being ‘bumps on the road’. 



THE RULING HAS RECEIVED WIDESPREAD ATTENTION, AS IT POSES A POTENTIALLY FATAL THREAT TO THE FUTURE OF ONE OF THE MAIN CHARACTERISTICS OF THE EU – NAMELY, THE PRINCIPLE OF THE SUPREMACY OF EU LAW OVER THE NATIONAL LAW OF ITS MEMBER STATES



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ROLLING BACK ON RIGHTS?

It is clear from the findings of a recent survey of criminal defence solicitors that no comprehensive or consistent approach is being taken to protect the right to legal advice for suspects at garda stations. **Áine Bhreathnach** reports

ÁINE BHREATHNACH IS A SOLICITOR IN SHALOM BINCHY & CO SOLICITORS



TO DATE, THERE IS NO STATUTORY FRAMEWORK IN PLACE PROTECTING THE RIGHT OF PERSONS DETAINED FOR QUESTIONING TO HAVE A SOLICITOR OF THEIR CHOICE PRESENT DURING INTERVIEWS

COVID-19 brings new and uncharted challenges to solicitors and An Garda Síochána to vindicate and protect the fair-trial rights of suspects to legal advice and representation during the interrogation process while in garda custody.

Garda interrogations often take between one and three hours – often more, but rarely less. For the duration of the interrogation, the suspect, solicitor and two gardaí sit in close quarters in small interview rooms. Some cases also require an interpreter and/or an appropriate adult to be in the room. Solicitors and An Garda Síochána must jointly respond to protect this integral part of the trial process.

In 2019, the European Court of Human Rights made it clear in *Doyle v Ireland*, as it had in other previous cases (see *Salduz v Turkey*, *Dayaman v Turkey*, *Beuze v Belgium*) that the right of access to legal advice at garda stations is part of the right to a fair trial, protected under [article 6](#) of the *European Convention on Human Rights*, namely, “suspects have the right for their lawyer to be physically present during their initial police interviews and whenever they are questioned in the subsequent pre-trial proceedings. Such physical presence must enable the

lawyer to provide assistance that is effective and practical, rather than merely abstract and, in particular, to ensure that the defence rights of the interviewed suspect are not prejudiced” (see *Beuze* and *Soytemiz v Turkey*, 27 November 2018).

In 2014, the DPP permitted solicitors to be present to advise during questioning when so requested by the suspect. It should be stated that, while this was a seismic shift in how solicitors and An Garda Síochána operated in Ireland, this right had been provided for 30 years in England, Wales and Northern Ireland. To date, there is no statutory framework in place protecting the right of persons detained for questioning to have a solicitor of their choice present during interviews.

Online survey

From 1 to 13 May 2020, Shalom Binchy Solicitors hosted an online survey asking colleague defence solicitors about their recent experiences of providing legal advice to suspects detained in garda stations during the initial stage of the COVID-19 public-health emergency (March to May 2020). The findings of the survey (*Experiences of Criminal Defence Solicitors in Garda Stations during COVID-19*, avail-

able on the Shalom Binchy website) are based on the responses of 25 respondents nationwide. The findings are qualitative in nature and provide a narrative snapshot of the recent experiences of criminal defence solicitors in the early days of the pandemic.

It is clear from the survey that there is no comprehensive or consistent approach being taken to protect the right to legal advice for suspects at garda stations. The panel provides a brief overview of approaches.

Impossible to comply

The current practice leaves solicitors and suspects with a choice of attending the station in circumstances where it is impossible to comply with Government public-health guidelines, or reverting to the pre-2014 practice – that is, no legal advice during questioning.

We have participated in a number of meetings with colleague lawyers in Northern Ireland, England and Europe to learn from their experiences.

EU countries, including Britain, have facilitated remote access at police interrogations and have identified suitable stations that facilitate social distancing. Colleagues in other jurisdictions have indicated that, while remote access is a positive addition to

Áine Bhreathnach and Shalom Binchy acknowledge and extend their thanks to all colleagues who contributed to the survey. Thanks, also, to Dr Yvonne Daly, Dublin City University, for her advice and guidance.



PICTURE: SHUTTERSTOCK

the resources available to advise clients, it is not without its challenges, including difficulties with connectivity, viewing exhibits and documents during interview, and protecting a client and building trust with them while being at a remove.

The criminal justice watchdog Fair Trials is developing useful toolkits to safeguard the right to a fair trial during the coronavirus pandemic (see www.fairtrials.org/covid19justice).

Rising to the challenge

It is clear from the survey that the current measures are inconsistent and unsatisfactory. Our firm has written directly to An Garda Síochána, the Law Society, the Department of Justice, and the Legal Aid Board outlining the findings of the survey and our key recommendations.

The Law Society's Criminal Law Committee has been at the forefront in presenting the survey findings and leading discussions


with An Garda Síochána to ensure that the rights of suspects in custody are protected, both in the short and medium term, while we learn how to live with COVID-19.

Jurisprudence from Europe is clear that the absence of a lawyer at the initial stage cannot be rectified at a later point in the trial process. It is also clear that An Garda Síochána and solicitors must develop new ways of working that protect against the spread of the virus.

Protocols are required from An Garda Síochána to ensure that protective measures are in place in each garda station and that they are applied in a consistent manner. Garda stations where social distancing is possible before, during and after interview, and for legal consultations, should be identified and used by An Garda Síochána.

Video-link

Solicitors also need suitable facilities between interviews. Remote access should be provided for the duration of this public-health emergency, preferably by video-link, and should be part of a suite of options open to gardaí and defence solicitors.

We have all got to find a way to work differently while COVID-19 remains a risk. This should not mean rolling back on the fair-trial rights of suspects. Nor should it mean solicitors having to choose between risking their health and vindicating their clients' rights. Now is the time for the solicitors' profession and An Garda Síochána to work collaboratively to protect and vindicate these rights. 

Q FOCAL POINT

BRIEF OVERVIEW OF APPROACHES

Positive:

- Efforts made by gardaí to comply with social-distancing guidelines, including changes to seating arrangements,
- Urgent arrests only,
- Hand sanitiser provided and gloves provided,
- Gardaí wore face masks and gloves,
- Large rooms provided for consultations and interviews,
- Perspex screen installed between garda and suspect,

- Time provided to have a lengthy telephone consultation,
- Interview and detention process focused and shorter.

Negative:

- No social-distancing being practised,
- No ventilation – air-circulating heater in use,
- Non-urgent arrests being carried out,
- No PPE – solicitors told to bring their own,

- No PPE used by gardaí or suspect – solicitor the only person in the room using mask and gloves,
- Perspex screen too small and ineffective; screen between one garda and detainee only,
- Lack of space to provide safe and confidential advice,
- No pre-interview medical check in respect of COVID-19,
- Gardaí encouraged suspects to ring another solicitor who would attend at the garda station.

IS THE RULE OF LAW UNDER THREAT?

As the world struggles to navigate the unsettling reality of COVID-19, there has been considerable debate around special emergency legislation, which has restricted individual rights and freedoms in the interests of public health, says **Michelle Lynch**

MICHELLE LYNCH IS POLICY DEVELOPMENT EXECUTIVE AT THE LAW SOCIETY OF IRELAND



COVID-19 SHOULD NOT BE USED AS A PRETEXT TO LIMIT DEMOCRATIC AND CIVIC SPACE, THE RESPECT OF THE RULE OF LAW, AND OF INTERNATIONAL COMMITMENTS

The membership of the European Union is based upon shared common values, one of which is the rule of law. Article 2 of the *Treaty on European Union* provides that the union is founded on values such as freedom, democracy, equality, and respect for human rights, as well as protection of the rule of law. While many agree on the importance of the rule of law, much debate exists over a definitive definition, and its precise elements may prove somewhat elusive, even for those working within the law.

In a communication, *Further Strengthening the Rule of Law within the Union* (3 April 2019), the European Commission set out an EU definition of the rule of law. In doing so, it acknowledges the growing pressure it faces, and also the steps to be taken to protect and strengthen it.

The definition affirms that “all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts”. It also includes, among other things, a prohibition on arbitrary exercise of executive power, legal certainty, transparency, respect for fundamental

rights and equality before the law.

As we have all witnessed, however, the rule of law has faced considerable threat in recent times, even in societies such as Hungary, Poland and the United States. Populist rhetoric and policy have gained ground, placing further pressure on the rule of law, democracy and human rights.

The new reality

The current pandemic has created a situation ripe for abuse, where the rule of law may be irreversibly broken down under the guise of emergency powers. As the world struggles to navigate the new and unsettling reality that COVID-19 has brought, there has been considerable debate around special emergency legislation that has restricted individual rights and freedoms in the interests of public health as a whole. Many governments around the world now have significantly enhanced powers to restrict the movement and freedoms of citizens, affecting how each of us live our day-to-day lives.

While emergency legislation gives the Irish Government the power to restrict movement and travel, people still enjoy the protection of rights contained, not only under the Constitution, but

also under international instruments, including the *European Convention on Human Rights*.

The measures taken must be legitimate, proportionate and necessary. In a recent podcast by the International Bar Association, *Rule of Law in the Time of COVID-19*, the director of the IBA’s Human Rights Institute (IBAHRI) commented on the balancing act that was being undertaken between the constraint of individual freedoms and that of the public-health interests of society at large. She urged that, in exercising special powers, there were three key elements that had to be followed:

- They must be limited in time,
- They must be kept under review, and
- The use of the power has to be independently monitored.

In this regard, the announcement by the Dáil of the establishment of a special COVID-19 Committee to provide effective oversight and accountability was a welcome development.

Wolf in sheep’s clothing

The UN has warned of the risk of the pandemic being used as a pretext to undermine democracy and quash legitimate dissent. It emphasises that fairness, justice,



PIC: TOMASZ GZELL/EPA

European judges joined their colleagues to march outside Poland's Supreme Court in January

and the rule of law are essential to strengthen and support efforts against COVID-19. In a recent [declaration](#), High Representative Josep Borrell, on behalf of the EU, affirmed “the need to pay special attention to the growing impact of the pandemic on all human rights, democracy and the rule of law”, and cautioned that it “should not be used as a pretext to limit democratic and civic space, the respect of the rule

of law and of international commitments”.

Recently, Hungarian Prime Minister Viktor Orban, who has faced considerable criticism during much of his time in office, introduced emergency legislation without a time limit and with no capacity for review or monitoring. This effectively created rule by decree, with no end date, introducing excessive prison sentences for those breaching

quarantine restrictions or for spreading false information. The government has advised that this will be brought to an end by the end of June. However, it remains to be seen what the long-lasting effects are on the rule of law in Hungary.

The IBAHRI issued a statement urging the Hungarian Parliament not to pass the legislation, as it declared that it is in clear contravention of interna-

tional human rights standards. The real fear is that these powers will not be relinquished once the pandemic has passed.

Unprecedented step

Poland has also faced significant criticism, not least for its treatment of the judiciary, with numerous attempts to diminish their independence and power through repressive disciplinary measures. In January, in an

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unprecedented step, European judges joined their colleagues to march outside Poland’s Supreme Court to lend their support and solidarity. At the end of April, the European Commission launched an infringement procedure regarding the new disciplinary regime for judges.

In response to developments such as those in Poland, the Council of Bars and Law Societies of Europe issued a resolution on the rule of law, asserting that “breaches of democracy, the rule of law, and the violations of fundamental rights will not be tolerated”.

In the US, President Donald Trump has faced substantial criticism over his handling of the pandemic. This has ranged from minimising the risks of the virus, to cutting funding of the World Health Organisation (WHO) and, more recently, claiming that he alone as the president had the power to make the decision to reopen the country early. While he has now reneged on that last assertion, he has since announced

that the US will terminate its relationship with the WHO, as well as authorising sanctions and additional visa restrictions against International Criminal Court personnel in light of an investigation into war crimes in Afghanistan.


In April, the Department of Foreign Affairs published a joint statement with other European countries expressing deep concern that principles, including the rule of law, are at risk of violation with the adoption of extraordinary measures. It also expressed support for the initiative of the European Commission to monitor the application of these measures. Notably, neither Hungary nor Poland were among the cosignatories.

What lies ahead

As we continue to acclimatise to the new world that COVID-19 has thrust upon us, concern grows around how emergency measures will continue to be implemented. This is not only

in terms of how the law itself has been drafted and is being implemented by the executive, but also the manner in which the restrictions are being policed and enforced, and justice is being delivered. Access to the courts and to justice remains a very real concern and, hopefully, novel solutions will be found that ensure the right is effectively protected.

The European Commission has committed to conducting a ‘Rule of Law Review Cycle’, including an annual report, with the first report monitoring the situation in each member state expected in autumn 2020.

In light of the uncertainty currently faced by the world, and the measures already taken in some countries, it remains to be seen whether steps such as this to strengthen and protect the rule of law will succeed. Nevertheless, it is clear that the rule of law is something that is vital, perhaps even more so in a post-COVID world. 

THE UN HAS WARNED OF THE RISK OF THE PANDEMIC BEING USED AS A PRETEXT TO UNDERMINE DEMOCRACY AND QUASH LEGITIMATE DISSENT



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COPYRIGHT AND THE EVOLVING DIGITAL LANDSCAPE

The much-debated *Copyright Directive* entered into force on 7 June 2019, almost three years after the publication of the draft. The legislative process was not the smoothest, writes **Mark Hyland**

MARK HYLAND LECTURES AT THE TECHNOLOGICAL UNIVERSITY DUBLIN AND IS IMRO ADJUNCT PROFESSOR OF INTELLECTUAL PROPERTY LAW AT THE LAW SOCIETY OF IRELAND



THE RECITAL ALSO RECOMMENDS THAT RIGHTS-HOLDERS SHOULD 'RECEIVE APPROPRIATE REMUNERATION FOR THE USE OF THEIR WORKS OR OTHER SUBJECT MATTER'

Now that the dust has somewhat settled on the process establishing *Directive (EU) 2019/790* on copyright and related rights in the digital single market, the member states are left with the not inconsiderable challenge of transposing this rather complex piece of copyright legislation into domestic law by 7 June, 2021.

Besides constituting a key element of the European Commission's digital single market strategy (2014-2019), the *Copyright Directive* will help to bring about an ambitious modernisation of the EU copyright framework. Separate rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes are laid down by *Directive (EU) 2019/789*.

Major reform

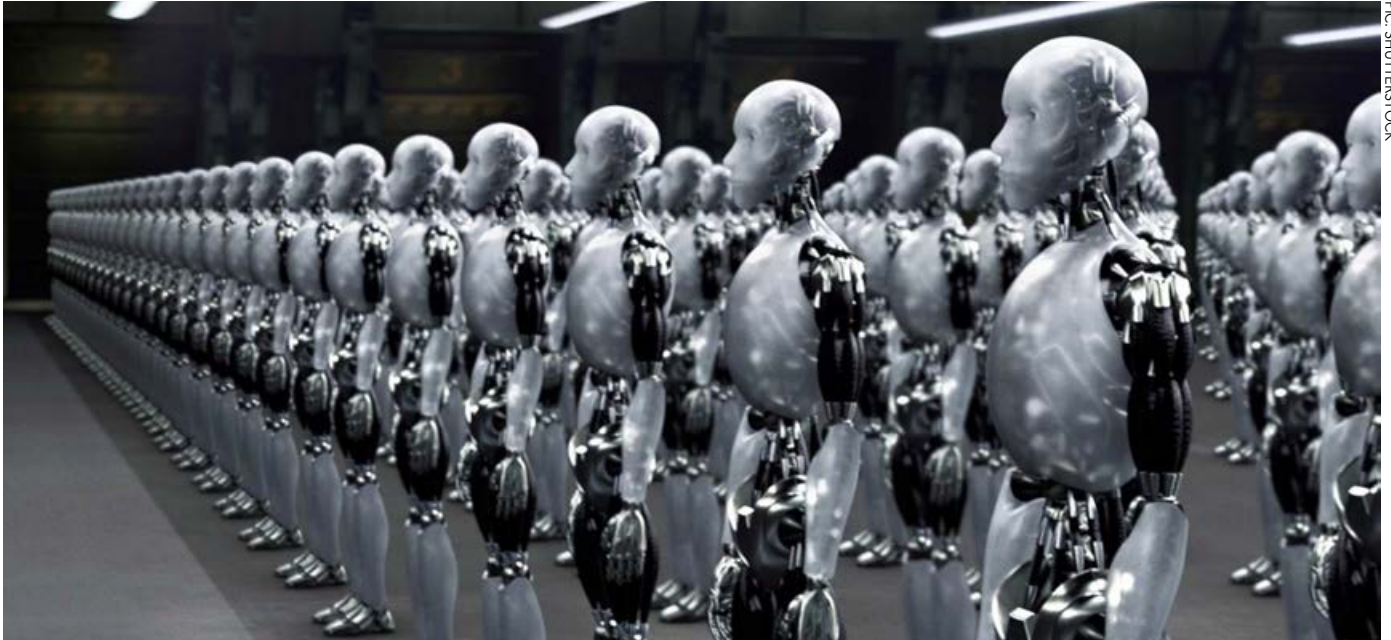
The *Copyright Directive* will bring about the first major reform of the EU copyright regime in almost 20 years. The

last significant revamp of the EU copyright rules occurred in 2001, when the *Information Society Directive (2001/29/EC)* was adopted. The aim of that directive was to harmonise certain aspects of copyright and related rights in the information society.

The *Copyright Directive* was adopted to meet the challenges of 'rapid technological developments' and the emergence of 'new business models' and 'new actors' (recital 3). It acknowledges the need for copyright legislation to be future-proof, so as not to restrict technological

development. While the directive reiterates the soundness of the objectives and principles laid down by the EU copyright framework, it also recognises that some legal uncertainty remains for both rights-holders and users as regards certain uses, including cross-border uses of works and other subject matter in the digital environment. It is worth noting that the modernisation of EU copyright law was heralded four years prior to the adoption of the *Copyright Directive*, when a European Commission communication ('Towards a





PIC: SHUTTERSTOCK

modern, more European copyright framework', 9 December 2015) spoke of adapting and supplementing the existing EU copyright framework.

By creating a comprehensive new EU copyright framework, the *Copyright Directive* should benefit a wide range of players acting in the digital environment: internet users, music creators, artists, journalists and the press, film and music producers, online services, libraries, researchers, museums and universities, among many others.

Directive objective

The subject matter and scope of the directive are set out in article 1. The directive lays down rules that aim to further harmonise union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. The directive also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules that

aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter.

Protected content

Considerable ink has been spilled discussing the pros and cons of article 17. The objective of this particular provision is to recalibrate the EU's digital economy to ensure that rights-holders are fairly remunerated. This recalibration can occur by addressing the so-called 'value gap' in the digital market. The value gap refers to the mismatch in financial benefits flowing to rights-holders (such as musicians) and the online content-sharing service providers (OCSSPs). The *Copyright Directive* defines an OCSSP as "a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes".

Normally, the OCSSP does dis-

proportionately well, economically speaking, from the provision of copyright material on its platforms. In contrast, the rights-holder (such as the musician) generally receives comparatively little economic benefit from the (often unauthorised) sharing of his/her IP-protected material online.

Licensing agreements

Recital 61 provides the rationale behind article 17. It refers to the growing complexity of the online content market and the challenges posed to copyright holders whose protected material is uploaded without their prior authorisation. Legal uncertainty exists as to whether the providers of online content services engage in copyright-relevant acts and need authorisation from rights-holders in the context of copyright content uploaded by individual users (user-generated content). Recital 61 goes on to exhort the establishment of a licensing market between rights-holders and OCSSPs. It states that the licensing agreements should be "fair and keep a reasonable balance between both parties". Import-

THE 'VALUE GAP' REFERS TO THE MISMATCH IN FINANCIAL BENEFITS FLOWING TO RIGHTS-HOLDERS (SUCH AS MUSICIANS) AND THE ONLINE CONTENT-SHARING SERVICE PROVIDERS

tantly, the recital also recommends that rights-holders should “receive appropriate remuneration for the use of their works or other subject matter”. Finally, the recital states that contractual freedom should not be affected and that it is entirely up to rights-holders whether or not they wish to give an authorisation or to conclude a licensing agreement.

Exclusive performance rights

Article 17(1) deems an OCSSP to have performed an act of communication to the public or an act of making available to the public when it gives public access to copyright-protected works uploaded by its users. Both of these acts are deemed exclusive rights under article 3 of the *Information Society Directive*. To make this situation legal from a copyright perspective, the OCSSP is obliged to obtain an authorisation from the rights-holders – for instance, by concluding a licensing agreement. An authorisation will also cover acts carried out by users of the OCSSP’s services, provided they are not acting on a commercial basis or where their activity does not generate significant revenues.

By virtue of article 17(3), when an OCSSP performs an act of communication to the public or an act of making available to the public (without the rights-holder’s authorisation), then the limitation of liability established in article 14(1) of the *E-Commerce Directive (2000/31/EC)* shall not apply. Article 4 (1) is commonly called the ‘hosting exemption’ and applies to information-society services consisting of the storage of information. Under this provision, the provider of such services can avoid liability for copyright infringement, provided it can satisfy one of two specified conditions in the directive.

Possible liability

Importantly, if no authorisation is granted by the rights-holder

to the OCSSP, then, under article 17(4), the OCSSP is deemed liable for unauthorised acts of communication to the public and making available to the public copyright-protected works. However, exemptions from liability apply if the OCSSP can demonstrate that it has:

- a) Made best efforts to obtain an authorisation, and
- b) Made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rights-holders have provided the OCSSP with the relevant and necessary information, and, in any event,
- c) Acted expeditiously, upon receiving a sufficiently substantiated notice from the rights-holders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b).

The determination as to whether the OCSSP has complied with its obligations under article 17(4) will involve the application of the principle of proportionality, and two further elements will be considered:

- The type, audience, and the size of the service and the type of works or other subject matter uploaded by the users of the service, and
- The availability of suitable and effective means and their cost for OCSSPs.

New OCSSPs will be subject to a less strict liability regime. To avail of this less onerous regime, the OCSSP’s services must have been available to the public within the EU for less than three years, and they must have an annual turnover below €10 million.

Article 17(7) refers to envis-

aged cooperation between OCSSPs and rights-holders, and speaks of the acceptability of copyright-compliant works being uploaded to online content-sharing services. In addition, digital works covered by copyright exceptions and limitations may be uploaded and made available by internet users.

The exceptions/limitations specifically referred to in the *Copyright Directive* are quotation, criticism, review, and works used for the purpose of caricature, parody or pastiche. No general monitoring obligation is imposed on OCSSPs by the directive.

Complaint and redress

However, under article 17(4), OCSSPs must provide rights-holders with adequate information on the functioning of their practices, and, where licensing agreements are concluded between OCSSPs and rights-holders, information on the use of content covered by the agreements.

Under article 17(9), OCSSPs must put in place an effective and expeditious complaint and redress mechanism that is available to users of their services. This mechanism can be used where there are disputes over the disabling of access to (or the removal of) works or other subject matter uploaded by them.

Where rights-holders request to have access to their specific works or other subject matter disabled, or to have those works removed, they must justify the reasons for their requests.

Complaints submitted by users of online content-sharing services shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review.

Under the *Copyright Directive*, out-of-court redress mechanisms must be available in each EU member state for the settle-


ment of disputes. Such mechanisms shall enable disputes to be settled impartially, and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies.

Interestingly, under article 17(10), ‘stakeholder dialogues’ are envisaged to discuss best practices for cooperation between OCSSPs and rights-holders. These stakeholder dialogues will be organised by the European Commission and the EU member states, and the results of the dialogues will assist the commission in issuing guidance on the application of article 17. In discussing best practices, special account must be taken, among other things, of the need to balance fundamental rights and the use of exceptions and limitations.

Protecting creativity

The *Copyright Directive* will protect creativity in the digital age and ensure that EU citizens benefit from wider access to content.

The new rules will strengthen the creative industries within the EU, which represent 11.65 million jobs, 6.8% of GDP, and are worth €915 billion per year. The directive attempts to achieve the right balance between the interests of all players – users, creators, authors, press – while putting in place proportionate obligations on OCSSPs.

Article 17 is an important and very necessary provision. It is unfortunate, however, that the EU legislators have used rather vague language in the provision. Terms such as ‘significant revenues’, ‘best efforts’, ‘high industry standards of professional diligence’, and ‘acted expeditiously’ may undermine the principle of legal certainty, and will pose challenges for governments during the transposition process. 

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.
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LEGAL SERVICES REGULATION ACT TASK FORCE

CRIMINAL LEGAL AID AND SECTION 150 NOTICES

On receiving instructions from a client, a solicitor is required, under section 150 of the *Legal Services Regulation Act 2015*, to provide a section 150 notice to the client that discloses the costs that will be incurred. Where it is not

reasonably practicable to do so at that time, the solicitor can set out the basis upon which the costs are to be calculated until as such time as it becomes practicable to disclose the costs that will be incurred in a section 150 notice.

Where the client is granted legal aid under the *Criminal Justice (Legal Aid) Act 1962*, the Society is of the view that the requirement for the solicitor to inform the client of the costs they will incur cannot be met, as the client does

not incur any costs towards the solicitor. As a consequence, solicitors appointed to provide legal aid under the *Criminal Justice (Legal Aid) Act 1962* are not required to provide the client with a section 150 notice.

MONEYS RECEIVED FROM THIRD PARTIES

When acting for clients, most notably in respect of private equity or private loan transactions, solicitors are frequently asked to facilitate transactions by receiving, holding, and disbursing money received, not only from the solicitor's client, but also from third parties. Often in such transactions, it is intended that the moneys being raised for, or to be used in, the transaction will be paid into and out of the solicitor's client account. This involves the solicitor receiving moneys from third parties who are not clients of the solicitor.

Regulation 4(1) of the *Solicitors Account Regulations 2014* provides that a solicitor who receives, holds, or controls clients' moneys shall, without delay, pay such clients' moneys into the client account.

Clients' moneys are defined as moneys received, held, or controlled by a solicitor arising from his or her practice as a solicitor for or on account of a client or clients, whether the moneys are received, held, or controlled by him or her as agent, bailee, stakeholder or in any other capacity.

Where moneys are received for or on account of a solicitor's client, the moneys are clients' moneys and, accordingly, it is appropriate that such funds are paid into the client account, in accordance with regulation 4(1) of the *Solicitors Accounts Regulations 2014*.

However, where moneys are received from third parties that are not moneys received for or on account of a client or clients, these moneys do not come within

the definition of clients' moneys. It is therefore a breach of the regulations for a solicitor to pay such moneys or allow such moneys to be paid into the client account. The solicitor does not have a definitively binding obligation to account to a client for that money. These moneys should not be paid into the client account.

Regulation 5(4) of the *Solicitors Accounts Regulations 2014* provides that, for the avoidance of doubt, it shall be a breach of the regulations for a solicitor to pay into or hold in a client account moneys other than clients' moneys. Accordingly, where a solicitor facilitates a transaction by allowing funds received from third parties to be paid into a client account, that solicitor shall be in breach of the *Solicitors*

Accounts Regulations. Therefore, solicitors should not facilitate such transactions.

Furthermore, a solicitor is obliged to adopt policies and procedures to prevent and detect the commission of money-laundering and terrorist-financing offences. A solicitor has an obligation to identify and verify the identity of clients and to make such enquires into the source of funds as are reasonably warranted by the risk of money-laundering and terrorist-financing. Complying with these obligations presents significant difficulties for solicitors in receipt of funds from third parties.

John Elliot,
Registrar of Solicitors and Director
of Regulation

LEGAL EZINE FOR MEMBERS

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LEGAL PROFESSIONAL PRIVILEGE

The Guidance and Ethics Committee and the In-House and Public Sector Committee of the Law Society of Ireland are pleased to present the following practice note on legal professional privilege (LPP).

This practice note is the first in a series of two on LPP. This practice note provides an overview on the status of LPP for solicitors. It includes an examination of legal advice privilege and litigation privilege, along with a summary of the principal duties with regard to the law of privilege. It also looks at recent areas of interest relating to LPP.

A second, related practice note, focusing on solicitors working in-house in the private and public sectors, is published below this note.

These practice notes represent guidance for best practice for practitioners in the area of legal professional privilege and do not constitute legal advice.

Overview

1) Legal professional privilege (LPP) confers on a client a privilege of exemption from disclosure of communications that may otherwise be required to be revealed. The party asserting the existence of LPP bears the onus of justifying the claim. Unlike other forms of privilege, once LPP has been established on the facts of a case, it is inviolate and there is no judicial discretion to displace it. LPP encompasses two distinct forms of privilege: legal advice privilege (LAP) and litigation privilege (LP).

Status of LPP

2) LPP is a common law right, copper-fastened in many instances by statute. Further, LPP has a constitutional foundation that elevates it beyond a mere rule of evidence. LPP

enjoys constitutional protection as a dimension of the protection of the administration of justice afforded by article 34 of the Constitution. It is unclear whether LPP is also recognised as an unenumerated constitutional right (see, for example, *Miley v Flood* [2001] 2 IR 50; *Martin v Legal Aid Board* [2007] 2 IR 759; and the comments of *McGrath on 'Evidence'* (2nd ed, 2014) at para 10-248).

3) LPP is recognised as a fundamental right in the jurisprudence of the ECHR, as an aspect of article 6 (the right to a fair trial; *Niemietz v Germany* (1992) 16 EHRR 97) and article 8 (the right to privacy; *Campbell v UK* (1993) 15 EHRR 137). Equally, its existence as a fundamental right has been recognised in the case law of the CJEU (*AM&S v Commission* [1982] ECR 1575 and *Akzo Nobel Chemicals v Commission* [2010] 5 CMLR 19).

Legal advice privilege

4) Legal advice privilege (LAP) arises in respect of a confidential communication or a continuum of communications, or a reference to such communications, which takes place between a professionally qualified lawyer and a client, in the course of a professional legal relationship, in which legal advice is sought and/or received.

Communication containing legal advice:

5) LAP only extends to protect communications that contain legal advice as to a person's legal rights and liabilities and does not apply to the provision of legal assistance (*Smurfit Paribas Bank Ltd v AAB Export Finance Ltd* [1990] 1 IR 469). Legal assistance includes, for example, the drafting of contracts or docu-

ments in order to give effect to the intention of the client in an enforceable manner.

The corporate client:

6) A client may be a natural or a legal person. Where the client is a legal person, such as a large corporation, difficulties have arisen in England and Wales regarding the identification of those employees who are 'authorised' to deal with the lawyer on behalf of the corporate client as a result of the decision of the Court of Appeal in *Three Rivers District Council v Governor and Company of the Bank of England (No 5)* [2003] QB 1556, which has been the subject of criticism, but was most recently reaffirmed in *SFO v ENRC* [2019] 1 ALL ER 1026. In this jurisdiction, the High Court, in *Ryanair v Channel 4* [2018] 1 IR 734, confined *Three Rivers* to its facts, holding that, where there was no evidence that a special unit had been set up within Channel 4 to deal with the relevant litigation (as had occurred in *Three Rivers*), then there was no basis to confine the entitlement to claim privilege to a limited group of employees. As a result, the court considered that all staff were deemed to be authorised to communicate with the lawyers for the purpose of attracting LAP.

Professionally qualified lawyer:

7) The definition of 'lawyer' encompasses a solicitor, a barrister, a salaried in-house legal adviser, a foreign lawyer and the attorney general (*McMahon v Irish Aviation Authority* [2016] IEHC 221). The UK Supreme Court has held that other professionals who are not lawyers will not attract the protection of LAP, even where those persons are dispensing legal advice to their clients (*R (on the application*

of Prudential Plc v Special Commissioner of Income Tax [2013] 2 AC 185). While LAP will not apply in respect of persons who have ceased to act as lawyers, traditionally it has been thought to apply where the client was unaware of this fact (*Calley v Richards* (1854) 19 Beav 401).

Lawyer conducting legal business through intermediary:

8) The common law, recognising that lawyers "cannot transact all their business in person", permits the seal of privilege to apply in circumstances where legal business is conducted through intermediaries or subordinates (*Taylor v Forster* (1825) 2 C&P 195). It is generally accepted that LAP will not be lost where lawyers communicate with their client through the agency of legal executives, paralegals, apprentice solicitors or pupil barristers.

Litigation privilege

9) LP arises in respect of confidential communications that take place between a lawyer or a client and a third party for the dominant purpose of preparing for litigation, whether existing or reasonably apprehended (*Artisan Glass Studio v Liffey Trust* [2018] IEHC 278). Communications may be written or oral and may, for example, include photographs (*Hansfield Developments v Irish Asphalt* [2009] IEHC 420).

Communication with third parties:

10) It is generally accepted that potential witnesses, including experts, qualify as third parties. Hence, draft or rejected witness statements are covered. Final statements may become part of disclosure required under the rules of court. There is also some support for the view that LP covers the 'work product' of a lawyer preparing for litiga-

tion – including draft pleadings, draft written legal submissions, internal memoranda and notes – notwithstanding the absence of any communication with a third party (*McGrath on ‘Evidence’* (2nd ed, 2014), §10.99).

Dominant purpose test:

11) In applying the ‘dominant purpose’ test, the court takes an objective approach. In *Colston v Dunnes Stores* [2019] IECA 59, the Court of Appeal held that the evidence required in order to discharge the evidential burden that rested on a party asserting LP should be of sufficient quality and character to allow the court to make definitive findings about the motivation and/or intention of the creator of the document over which privilege is maintained. A bald assertion as to the dominant purpose of a document or the subjective state of mind of the party asserting privilege was not sufficient without evidence to support them. To discharge the evidential burden, the evidence must be of such quality and character as to enable the court to make definitive findings about the motivation and/or intention of the creator of any document in respect of which privilege is claimed. What was required was a detailed affidavit explaining “the nature, genesis and purpose of the documents in issue”.

Nature of litigation:

12) Litigation need not be adversarial in nature for LP to apply (*Ahern v Mahon* [2008] 4 IR 704).

Regulatory or investigatory privilege:

13) A form of LP, described as ‘regulatory’ or ‘investigatory’ privilege, may also be validly asserted in respect of communications that take place in response to a regulatory investigation undertaken by a law enforcement agency (*Ciara Quinn v IBRC* [2015] IEHC

315, involving investigations by the Financial Regulator and the ODCE).

Avoidance of litigation:

14) Communications may attract LP in circumstances where they take place as a means of avoiding contemplated litigation by compromise, in the same way that LP traditionally applies to communications that take place as a means of preparing for litigation (*Horgan v Murray* [1999] 1 ILRM 257). ‘Without prejudice’ privilege may also protect communications being sent in a *bona fide* attempt to settle with opponents where the intention is that, if negotiations fail, the communication will not be disclosed without the consent of the parties. Communications over which such privilege is claimed should be headed ‘without prejudice’.

Report prepared pursuant to a statutory obligation:

15) The High Court recently rejected a claim of LP asserted in respect of reports prepared by the official assignee of a bankrupt, in circumstances where the examination of the witnesses – from which the reports were then formulated – had taken place pursuant to a statutory obligation under section 21 of the *Bankruptcy Act 1988* (*Lehane v Yeseb Holdings* [2019] IEHC 4). However, central to the court’s decision was the statutory requirement that the examinations take place in open court, thereby negating the requisite condition of confidentiality necessary to support any claim to privilege. Confidentiality will be a relevant consideration on the facts of each case.

Termination of litigation privilege:

16) LP is temporal in scope and ends upon the termination of the litigation in respect of which it was asserted. It may only subsequently be asserted in respect

of ‘the same or closely related proceedings’ (*Ryanair v Revenue Commissioners* [2018] IECA 222). This may be contrasted with LAP, where a communication that is once privileged is always privileged.

Preservation of privilege where disclosure made to third party

17) Apart from cases in which a party to litigation expressly deploys a privileged document for their own use at trial, in which case the privilege is lost (*Hannigan v DPP* [2001] 1 IR 378), the courts are reluctant to infer any implied waiver of privilege in circumstances where documents are disclosed to third parties. The general rule is that privilege will not be lightly overborne as a result of disclosure, in the absence of an intention to abandon the privilege. While disclosure can defeat privilege, it is not bound to do so. Privilege may be found to be preserved in a number of ways.

Limited disclosure for particular purpose:

18) Privilege may be preserved on the basis that there has been limited disclosure for a particular purpose (as in *Fyffes v DCC* [2005] 1 IR 59, where documents were disclosed to a regulator, and *Woori Bank v KBD* [2005] IEHC 451, where documents were disclosed to the public prosecutor’s office).

Common interest privilege:

19) Privilege may be preserved on the basis of common interest privilege, where the party to whom the documents were disclosed was deemed to have a common interest in the advice or progress of the litigation (as in *Redfern v O’Mahony* [2009] 3 IR 583, where the third parties were parties to the same commercial transaction; in *Moorview Developments v First Active plc* [2009] 2 IR 788, where the advice was

shared among a group of connected companies; and in *Hansfield Developments v Irish Asphalt Ltd* [2009] IEHC 420, where the advice was shared with a separate company that, nonetheless, shared an interest in the proceedings).

Stipulations of confidentiality:

20) Practitioners should be aware, however, that in all cases where privilege was upheld, confidentiality agreements were entered into between the parties and the documents were supplied without prejudice to the entitlement to continue to claim privilege. Privileged documents should only be disclosed to third parties on that basis.

Joint interest privilege:

21) Joint interest privilege provides a further basis upon which the privilege in documents may be preserved. It has been held to be the basis upon which a shareholder is entitled to see legal advice received by the company of which they are a shareholder (*Carlo Tassara Assets Management SA v Eire Composites Teoranta* [2016] IEHC 103). The shareholder remains entitled to see that advice, even where they subsequently enter into litigation with the company. However, the shareholder’s entitlement does not extend to seeing advice obtained by the company in relation to the litigation with the shareholder.

Voluntary waiver of privilege:

22) Practitioners should be aware that a voluntary waiver of privilege in respect of a selection of documents, whether disclosed pre-trial or during the course of litigation, may result in a waiver being implied in respect of the remaining undisclosed privileged documents, where otherwise an unfairness or litigious disadvantage could accrue to the opposing party (*Quinn v IBRC* [2019] IEHC 89).

Loss of legal professional privilege

23) LPP may be lost in a number of circumstances:

- a) Where there is an intention to abandon the privilege in a communication (*Hannigan v DPP* [2001] 1 IR 378),
- b) Where the privilege is overridden by the express language of statute (see, for example, section 45 of the *Courts and Court Officers Act 1995*),
- c) Where the communication is used to further a criminal or fraudulent purpose, even where the lawyer is not party to or even aware of the purpose to which his client intends to put the communication (*Hussain v Garda Commissioner* [2016] IEHC 612),
- d) In some proceedings involving the welfare of children (*TL v VL* [1996] IFLR 126),
- e) In disputes regarding testamentary dispositions (*Russell v Jackson* (1851) 9 Hare 387), and
- f) Though it has not been tested in this jurisdiction, there is authority in the common law world that supports the view that the privilege may be lifted in cases in which the innocence of an accused person is at stake.

Statutory powers of regulators to request legally privileged documents

24) A recent attempt by the Financial Reporting Council (FRC) to carve out a 'no infringement exception' or a 'technical infringement exception' to LPP, in circumstances where a regulator exercises a statutory power to request documents in the context of an investigation into a regulated body, was rejected by the UK Court of Appeal in *Sports Direct International plc v The Financial Reporting Council* [2020] EWCA Civ 177.

The FRC had argued that, in spite of the clear language of the statutory scheme pursuant to which it was conducting an

investigation into a firm of auditors – which exempted a person to whom a request for documents was made from disclosing those documents to the regulator where they were protected by LPP – an exception should be made where (i) the request for information comes from a regulator, (ii) the regulator is bound by duties of confidentiality in its use of the information, and (iii) the holder of the privilege is other than the person who is at risk of some adverse finding as a result of the use of the information by the regulator.

The Court of Appeal, in rejecting the FRC's formulation of these exceptions to LPP, reiterated that any incursions into the law of privilege must be principled and clear so as not to undermine the confidence of the client in non-disclosure. In addition, it reaffirmed that there are no exceptions to LPP other than the well-established iniquity exception and the circumstance of the clear abrogation of privilege by statute, either by the use of express language or necessary implication. The court concluded that the language of the statute was clear and entitled the auditor or the auditor's clients to withhold legally privileged material from the regulator.

Data protection

25) The *Data Protection Act 2018* copper-fastens the right to assert LPP in the face of requests for data made by both the Data Protection Commission (see sections 132, 138 and 151) and data subjects (see section 162). Provided that the data would be exempt from production in court proceedings on the ground of LPP, the exemption will provide a valid basis upon which to refuse to disclose the documents under the act.

Areas of recent interest

Criticism of blanket claims to privilege:

26) Recent cases have highlighted the importance of properly articulating claims to LPP in the affidavit of discovery (*Gallagher v RTÉ* [2017] IEHC 237; *Quinn v IBRC* [2015] IECA 84 and *Ryanair v Channel 4* [2018] 1 IR 734). Practitioners should individually list and date each item in respect of which the claim is made and provide a meaningful narrative, containing as detailed a description as possible, in respect of the document and the nature of the privilege asserted, consistent with the non-infringement of the privilege. In the absence of same, opposing parties are unable to assess whether privilege has been correctly asserted and whether it may be susceptible to challenge.

Onus on solicitors to swear verifying affidavits:

27) In more than one case in which privilege has been asserted in respect of large amounts of documents, the courts have directed the solicitor advising the party making discovery to swear an affidavit verifying that they have reviewed each item over which privilege has been claimed and that, in the solicitor's professional judgement, the claims are correctly made (*Quinn v IBRC* [2015] IECA 84 and *Ryanair v Channel 4* [2018] 1 IR 734). Commentators have noted that "this is a novel approach to privilege and appears to place a significant onus on the solicitor advising a party making discovery" (Abrahamson, Dwyer and Fitzpatrick, *Disclosure*, 3rd edition, 2019).

International aspects of the law of privilege

28) Though the question has not been directly decided in an Irish case, the courts in England and Wales have held that, where proceedings are instituted before the English courts, the status of a privileged communication that contains legal advice in respect

of foreign law will be determined by reference to the *lex fori* (*In Re Duncan* [1968] P 306) – that is, the law of the country in which the action is taken.

Summary of solicitors' duties

29) Solicitors' principal duties with regard to the law of privilege may be summarised as follows:

- a) A solicitor is under a duty to advise the client that they have a right to assert a claim to LPP and to make an assessment, based on the current state of the law, as to whether a valid claim to LPP has arisen on the facts before them,
- b) A solicitor is under a duty to assert a claim to LPP on the client's behalf,
- c) Insofar as it is the privilege of the client and not the solicitor, a solicitor is under a duty to maintain the confidentiality of privileged communications that take place between themselves and their client, and must not disclose the communications without the express consent of the client,
- d) In circumstances where it is evident that privileged documents were disclosed in error, the solicitor should make all reasonable attempts to return the documents and should not make use of them (a court will determine that matter based on what a hypothetical reasonable solicitor would do, even if it were not evident to the individual solicitor),
- e) A solicitor must ensure that claims to LPP, made in the second part of the first schedule of the affidavit of discovery, are sufficiently articulated, and
- f) A solicitor should take steps to rectify the affidavit of discovery if it comes to their attention that LPP has been incorrectly claimed in respect of a document or should have been claimed in respect of a document.

LEGAL PROFESSIONAL PRIVILEGE AND IN-HOUSE COUNSEL

This practice note is the second in a series of two on legal professional privilege (LPP). This practice note explores further best practice guidance on the application of LPP for solicitors working in-house in the private and public sectors and should be read in conjunction with the first practice note.

These practice notes represent guidance on best practice for practitioners in the area of LPP and do not constitute legal advice.

In-house counsel as 'professionally qualified lawyer'

1) Irish law does not draw any distinction between in-house legal counsel and external legal counsel for the purposes of the application of the law of legal professional privilege (LPP). The High Court recently confirmed their qualifying status in this jurisdiction, noting that “the definition of ‘lawyer’ for this purpose includes solicitors, barristers, salaried in-house legal advisers, foreign lawyers and the attorney general” (*McMahon v Irish Aviation Authority* [2016] IEHC 221, at paragraphs 16-17).

2) The origin of the principle, which applies to in-house counsel practising in both the private and public sector, may be found in the decision of the Supreme Court in *Geraghty v Minister for Local Government* [1975] IR 300 (at p312), in which Griffin J approved of the decision reached by the English Court of Appeal in *Alfred Crompton Amusement Machines Ltd v Customs and Excise Commissioners (No 2)* [1972] 2 QB 102, in which it was held that “there can be no difference between the position of a full-time salaried legal adviser employed by a govern-

ment department, a local authority, an industrial concern or any single employer, and the position of a legal adviser who practises his profession independently and is rewarded for his services by fees”.

3) Therefore, the guidance contained in the above practice note on the subject of legal professional privilege applies with equal force to in-house counsel insofar as they constitute professionally qualified lawyers under Irish law.

In-house counsel performing multiplicity of functions

4) Frequently, in-house counsel will hold a number of positions and perform a variety of functions for their corporate client, including those of an executive or management nature, in addition to the role they occupy as in-house legal adviser. *F&C Reit Property Asset Management plc v Friends First Managed Pension Funds Ltd* [2017] IEHC 383 demonstrates that the courts will require to be satisfied that the in-house counsel was dispensing legal advice in their capacity as a professionally qualified lawyer, as distinct from dispensing legal advice in their capacity as a ‘man of business’, in order to attract the protection of LPP. The case involved a challenge to communications that had taken place with the plaintiff company’s general counsel, who also held the position of partnership secretary within the company. Murphy J noted that “the courts have had no difficulty in deciding those cases where an organisation has a separate legal department whose purpose is to advise the organisation ... more difficult are those cases where a lawyer appears to

have a multiplicity of roles or functions within a company” (at paragraph 7).

The test:

5) The court formulated a test for the determination of questions arising in Irish law as follows: “Does the evidence disclose that, at the material time, the person claiming legal professional privilege was in fact acting as an independent legal adviser to his employer? If the evidence discloses that he acted in such a capacity, then his communications are privileged. If, on the other hand, the evidence shows that he was acting as a principal rather than as a legal adviser, then the privilege may not attach” (at paragraph 9).

6) It should be noted that the Court of Appeal in *BMO REP Asset Management plc v Friends First Managed Pension Funds Ltd* [2018] IECA 357 allowed the plaintiff’s appeal in circumstances where the court was provided with evidence on affidavit that explained the legal role occupied by the general counsel and the capacity in which he provided legal advice to the company. On this basis, the court was satisfied that, at all relevant times, the in-house counsel was acting in his role as legal adviser to the company, rather than as a man of business.

7) Practitioners must, therefore, be scrupulous to make the distinction and ensure that any consultation with them for the purposes of obtaining legal advice takes place in circumstances where it can be demonstrated that they were being consulted in their capacity as a professionally qualified lawyer.

Advice furnished on business matters

8) Even where the in-house counsel is consulted in their capacity as a professionally qualified lawyer, the nature of their role and knowledge of the affairs of the company may result in the ambit of the advice furnished by them extending beyond purely legal advice, to include advice on commercial or strategic matters. *Ochre Ridge Ltd v Cork Bonded Warehouses Ltd* [2004] IEHC 160 demonstrates that LPP will not attach to advice furnished by a lawyer in respect of business or commercial matters and will only vest in communications containing legal advice. Where advice covering mixed content is provided by the in-house counsel, it is prudent practice to maintain the different advices on separate documents in order to safeguard the privileged status of any legal advice given.

The corporate client

The English decision in Three Rivers (No 5):

9) The decision of the English Court of Appeal in *Three Rivers District Council v Governor and Company of the Bank of England (No 5)* [2003] QB 1556 has created difficulties in England and Wales with regard to the identification of the employees of a corporate entity who may be regarded as authorised emanations of the corporate client for the purposes of communicating with the company’s lawyers. In that case, the Court of Appeal determined that only those employees of the Bank of England who had been expressly authorised to communicate with the bank’s lawyers – those employees forming what was known as the ‘Bingham Inquiry

Unit’ – could attract the protection of LPP, to the exclusion of all others. The recent Court of Appeal decision in *SFO v ENRC* [2019] 1 All ER 1026 has confirmed that *Three Rivers (No 5)* still represents the law in England and Wales. Commentators have noted that the question of the identification of the corporate client has particular relevance – and potentially poses more problems – for in-house counsel, who often advise company employees daily, on an *ad hoc* basis, without any clarity as to the employees’ authorised status to give instructions and obtain advice (Bankim Thanki (ed), *The Law of Privilege*, 3rd ed, 2018).

Nuanced approach where communications with in-house counsel:

10) However, the English High Court has refused to apply *Three Rivers (No 5)* in a number of cases involving communications with in-house counsel, demonstrating a nuanced approach in that jurisdiction with regard to this particular category of lawyer. In *AB v Ministry of Justice* [2014] EWHC 1847 and *Menon v Herefordshire Council* [2015] EWHC 2165, the decision was distinguished and confined to its own facts on the basis that the Bingham Inquiry Unit represented the only group of employees authorised to communicate with the legal advisers. In the absence of any express authorisation conferred on individual employees on the facts of the cases before them, it was implicit that all employees had authority to seek legal advice of the nature and extent that they did from the in-house counsel.

The corporate client in Ireland:

11) The same reasoning was adopted by the Irish High Court in *Ryanair v Channel 4* [2018] 1 IR 734, which rejected Ryanair’s claims that LAP could not be asserted in respect of communications that took place between Channel 4’s lawyers and all

employees of the broadcasting company, as well as those communications that took place with the employees of an independent production company – to whom the production of a television programme had been outsourced – on the basis of the decision in *Three Rivers (No 5)*. Meenan J distinguished *Three Rivers (No 5)*, reasoning that the decision was predicated on the Bank of England’s creation of a designated unit of employees who were solely and expressly authorised to communicate with the bank’s lawyers. Absent the establishment of a special unit within Channel 4 or any express authorisation conferred on individual employees, all staff were deemed to be authorised to communicate with the lawyers for the purpose of attracting LAP: “In the absence of any evidence that there was such a ‘special unit’ in Channel 4, this submission is not sustainable” (per Meenan J at paragraph 87).

12) In arriving at this decision, the court also had regard to the submissions made by Channel 4 to the effect that its lawyers “were providing advice in their professional capacity as lawyers, specifically tasked with giving advice on the programme ... Advice was sought from these lawyers by others within Channel 4 and employers of the second-named defendant on the basis that they were consulting their own lawyer, specially tasked with giving them legal advice” (at paragraph 83). Thus, for the present, *Three Rivers (No 5)*, and the restrictive definition of the corporate client, has not been followed in Irish law. Each case will, however, fall to be determined on its own facts.

Communications between in-house counsel and external counsel

13) In-house counsel will often be required to obtain legal advice

from external counsel for a number of reasons, including taking expert advice from specialists on complex areas of law, which results in a flow of communications between the in-house counsel, the external counsel, and the client. *McMahon v Irish Aviation Authority* [2016] IEHC 221 demonstrates that the cloak of LAP will extend to cover this ‘continuum’ of communications, which, in that case, had involved legal advice passing between senior personnel in the defendant authority, its in-house solicitor, and the external law firm from whom advice had been sought.

Freedom of information

14) Section 31(1)(a) of the *Freedom of Information Act 2014* obliges a body to whom a request for information has been made to refuse to grant that request if the record concerned would be exempt from production in proceedings in a court on the ground of legal professional privilege.

Proceedings arising in a foreign jurisdiction

15) Laws of LPP vary from country to country and may protect communications to a greater or a lesser extent than in this jurisdiction. In particular, some jurisdictions, including France and Germany, afford less protection to communications that take place with in-house counsel. In circumstances where proceedings were to arise in a particular jurisdiction, it is possible that the *lex fori* (law of the forum) – rather than the law of the country in which the communication was made – would apply to the determination of any questions of LPP arising. This could have the effect of depriving a communication of LPP that would have applied had the proceedings taken place in Ireland. In-house practitioners, in particular, should be aware of the risks of

losing LPP where the privileged status of the communication falls to be determined by reference to the law of another jurisdiction.

Approach adopted in England and Wales:

16) The *lex fori* is the approach adopted in England and Wales with the result that, in proceedings before an English court, the English rules of LPP are applied to the determination of questions arising in respect of foreign advice furnished by a foreign lawyer (*Re Duncan* [1968] P 306). Though it did not concern communications with in-house counsel, the English High Court case of *RBS Rights Issue Litigation* [2017] 1 WLR 1991 demonstrates that communications with US lawyers, which would have been protected under the more generous American rules of LPP, may not be protected when determined in accordance with the law of England and Wales.

Communications with in-house counsel under EU LPP

17) The EU rules on LPP – formulated in the case of *AM&S v Commission* [1982] ECR 1575 and *Akzo Nobel Chemicals v Commission* [2010] 5 CMLR 19 – apply to written communications that take place with an independent lawyer, who is qualified to practise his or her profession within one of the member states of the European Union, for the purposes and in the interest of the client’s right of defence. The ‘independent lawyer’ is defined as one who is not bound to his or her client by a relationship of employment. As such, in-house counsel do not qualify as lawyers for the purposes of the EU law of privilege. This remains the case, notwithstanding the fact that in-house counsel in some jurisdictions may be members of their national bar associations or law societies and, thus, bound by professional rules regarding conduct and ethics.


18) The EU rules of LPP were developed by the CJEU in proceedings in which the status of privileged documents – which had been obtained in the course of an investigation by the European Commission into alleged contraventions of EU competition law – arose for consideration. Though the precedents are technically confined to the context of investigations conducted in that scenario, some commentators have expressed the view that “the decision may have a spill-over effect should the issue of privilege surface in other areas of EC law ... It is significant in this regard that the principle on which the decision rests was enunciated in sufficiently broad and general terms that it could potentially apply to any scenario involving an in-house lawyer, regardless of the kind of

legal work the lawyer performs or the nature of the European legal proceedings in which the issue arises” (Heffernan, *Legal Professional Privilege*, Bloomsbury Professional (2011), §2.50)

19) Care will therefore need to be taken by in-house practitioners who work for companies that operate within the reach of EU competition law and, where necessary, advice should be taken from external counsel in order to mitigate the risks of losing LPP in advice furnished to the company. The procurement of external legal advice has the undesirable effect of increasing a company’s legal costs, notwithstanding its retention of a dedicated in-house counsel or department. Indeed, it is worth recalling that, where the external advice is sought by the in-house counsel,

it must be from a lawyer qualified to practise within the EU for the privilege to apply.

20) It is unclear whether a recent decision of the Grand Chamber of the CJEU will have any relax- ing effect on the absolutist, exclu- sionary nature of the case law outlined above. In the joined cases of C-515/17P and C-561/17P (*Uniwersytet Wrocławski v REA* ECLI:EU:C:2020:73), the CJEU held, in the context of article 19 of the *Statute of the Court of Justice of the European Union*, which sets out the rules pursuant to which lawyers may represent parties in proceedings before the EU courts, that the lawyer’s duty of independence was to be understood not as the lack of any connection whatsoever between the lawyer and his client, but the lack of connections that have a

manifestly detrimental effect on his capacity to carry out the task of defending his client while acting in that client’s interests to the greatest possible extent (§64). The CJEU held that the Uni- versity of Wrocław was accord- ingly entitled to be represented by a lawyer who was connected to the university by a contract for lecturing services. He was not in a hierarchical relationship with the university and did not hold a high-level management position within the university. However, given that the decision concerned the interpretation of the statute, rather than questions regarding the application of LPP, it seems unlikely that the EU rules of LPP applicable to in-house counsel have changed in the absence of an express departure from the prin- ciples laid down in *AM&S* and *Akzo Nobel*. 



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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 Michael Doody, solicitor, principal at Doody Solicitors, 21 South Mall, Cork, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal [2017/DT85 and 2017/DT86; High Court record 2019/11SA]

Law Society of Ireland (applicant)

Michael Doody (respondent solicitor)

On 10 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in the following matters.

2017/DT85

- 1) Failed to comply adequately or at all with an undertaking dated 12 October in respect of his named client in relation to a named property,
- 2) Failed to respond adequately or at all to letters dated 20 November and 2 December 2015 sent to him by the Society,
- 3) Failed to respond adequately or at all to correspondence from the complainant and, in particular, letters dated 12 October 2011, 30 January 2012, 13 March 2014, 15 April 2014, 16 January 2015, 12 February 2015, and an email thread concluding with an email dated 23 April 2015.

2017/DT86

- 1) Failed to comply adequately or at all with an undertaking dated 15 May 2006 in respect of his named clients in relation to a named property,
- 2) Failed to comply adequately or at all with an undertaking dated 15 November 2006 in respect of his named client in

- relation to named properties,
- 3) Failed to comply adequately or at all with an undertaking dated 12 August 2008 in respect of his named client in relation to a named property,
 - 4) Failed to comply adequately or at all with the directions of the committee, in particular, the directions dated 1 September 2015, 3 November 2015 and 1 February 2016,
 - 5) Failed to respond adequately or at all to correspondence sent to him from the Society, in particular, letters dated 14 April 2015.

The Solicitors Disciplinary Tribunal referred the matter forward to the High Court and, in record number 2019/11SA, the High Court made the following orders on 10 October 2019:

- 1) That the respondent solicitor only be permitted to practise under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society, with a stay on the order for a period of four weeks, the respondent solicitor undertaking that, within the aforementioned four-week period, no undertakings will be given by him unless previously approved by the Law Society,
- 2) That the Law Society recover the whole of the costs of the proceedings before the Solicitors Disciplinary Tribunal and the High Court, to be taxed in default of agreement.

In the matter of James (Seamus) Doody, solicitor, practising in Doody Solicitors, 21 South Mall, Cork, and in the matter of an application by the Law Society of Ireland to the

Solicitors Disciplinary Tribunal [2017/DT84, 2017/DT87 and 2017/DT88; High Court record 2019/12SA]

Law Society of Ireland (applicant)

James (Seamus) Doody (respondent solicitor)

On 10 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in the following matters.

2017/DT84

- 1) Failed to comply adequately or at all with part of one or more of the following undertakings to the complainant:
 - a) Undertaking dated 11 March 2007 in respect of his named clients in relation to a named property,
 - b) Undertaking dated 1 April 2010 in respect of his named clients in relation to a named property,
 - c) Undertaking dated 29 September 2005 in respect of his named clients in relation to a named property,
 - d) Undertaking dated 12 October 2006 in respect of his named in relation to a named property,
 - e) Undertaking dated 30 May 2008 in respect of his named client in relation to a named property,
 - f) Undertaking dated 19 June 2008 in respect of his named clients in relation to a named property,
 - g) Undertaking dated 3 March 2014 in respect of his named clients in relation to a named property,
- 2) Failed to comply with the directions of the committee dated 1 September 2015, 3 November 2015 and/or 11

February 2016,

- 3) Failed to respond adequately or at all to a letter from the Society dated 14 April 2015.

2017/DT87

- 1) Failed to comply adequately or at all with all or part of an undertaking to the complainant dated 14 September 2007 in respect of named clients in relation to a named property,
- 2) Failed to comply with the directions of the committee dated 3 November 2015, 11 February 2016 and 16 June 2016,
- 3) Failed to respond adequately or at all to letters from the Society dated 8 July 2015, 5 August 2015 and 25 August 2015.

2017/DT88

- 1) Failed to comply adequately or at all with an undertaking dated 28 March 2005 to the complainant in respect of his named client in relation to a named property,
- 2) Failed to respond adequately or at all to a letter dated 20 November 2015 sent to him by the Society,
- 3) Failed to respond adequately or at all to correspondence from the bank and, in particular, letters dated 21 June 2010, 2 December 2010, 3 November 2011, 2 May 2012, 23 May 2014, 24 June 2014, 16 January 2015, 12 February 2015, and an email thread concluding with an email dated 23 April 2015.

The Solicitors Disciplinary Tribunal referred the matter forward to the High Court and, in record number 2019/12SA, the High Court made the following

orders on 18 October 2019:

- 1) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
- 2) That the name of the respondent solicitor shall be struck from the Roll of Solicitors.

In the matter of James (Seamus) Doody, solicitor, practising in Doody Solicitors, 21 South Mall, Cork, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal [6285/DT172/15, 6285/DT173/15, 6285/DT174/15, 6285/DT175/15, 6285/DT176/15 and 6285/DT177/15; High Court record 2019/13SA]

Law Society of Ireland (applicant)

James (Seamus) Doody (respondent solicitor)

On 31 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in the following matters.

6285/DT172/15

In respect of complaint one:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking dated 12 March 2001 in respect of a named property 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 a letter dated 3 October 2011,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 27 September 2012, 15 October 2012, 7 January 2013, 21 January 2013, 20 February 2013, 13 March 2013, 3 May 2013, 24 June 2013, 10 July 2013, 17 September 2013, 20 November 2013 and 6

December 2013,

- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint two:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 31 May 2004 in respect of a named property in a timely manner or at all,
- 2) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, including letters dated 22 June 2011 and 11 April 2012,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 15 October 2012, 7 January 2013, 21 February 2013, 28 March 2013, 19 April 2013, 8 May 2013, 9 August 2013, 19 September 2013, 20 November 2013 and 6 December 2013,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint three:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 7 November 2007 in respect of a named property 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 a letter dated 8 August 2011,

- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 15 October 2012, 26 February 2013, 25 March 2013, 17 May 2013, 16 August 2013, and 18 September 2013,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint four:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 23 March 2009 in respect of a named property 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 a letter dated 16 June 2011,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 15 October 2012, 7 January 2013, 21 January 2013, 20 February 2013, 13 March 2013, 3 May 2013, 25 June 2013, 9 August 2013, 26 September 2013, 17 October 2013, 21 November 2013, 19 December 2013 and 24 February 2014,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint five:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 20 October 2006 in respect of a named property 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 a letter dated 16 June 2011,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 20 February 2013, 25 March 2013, 17 May 2013, 16 August 2013, 18 September 2013, 21 October 2013, 3 January 2014, 13 January 2014, and 14 February 2014.

In respect of complaint six:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 8 December 2004 in respect of a named property 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 a letter dated 8 August 2011,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 20 February 2013, 28 March 2013, 16 April 2013, 9 August 2013, 18 September 2013, 21 October 2013, 22 November 2013 and 11 February 2013,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint seven:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 17 February 2006 in respect of a named property 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 a letter dated 22 June 2011,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 21 February 2013, 28 March 2013, 19 April 2013, 17 September 2013, 20 November 2013, 6 December 2013 and 11 February 2014,
- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 28 January 2014 to provide detailed information in relation to the file and to provide the Society with an update no later than 25 February 2014.

In respect of complaint eight:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 21 March 2008 in respect of a named property 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 9 January 2012 and 12 April 2012,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 21 February 2013, 28 March 2013, 19 April 2013, 17 July 2013, 17 September 2013, 17 August 2014, 29 August 2014 and 18 September 2014,

- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 16 September 2014 to provide detailed information in relation to the file and to attend at the committee meeting dated 28 October 2014.

In respect of complaint nine:

- 1) Failed to comply, up to the date of expiry of the stay on referral to the tribunal, with part or all of an undertaking to the complainant dated 1 March 2007 in respect of named properties 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 February 2009 and 10 June 2009,
- 3) Repeatedly failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 24 February 2010, 7 April 2010, 20 May 2010, 8 June 2010, 23 July 2010, 7 September 2010, 4 October 2010, 8 November 2010, 16 October 2012, 9 November 2012, 7 December 2012, 7 August 2014, 28 August 2014 and 18 September 2014,

- 4) Failed to comply with a direction of the Complaints and Client Relations Committee dated 16 September 2014 to provide detailed information in relation to the file and to attend at the committee meeting dated 28 October 2014.

6285/DT173/15

- 1) Failed to comply with an undertaking given to the bank in respect of a named property 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/the bank, including letters dated 29 May 2012, 2 May 2012, 13 October

- 2011 and/or 20 July 2011,
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 22 August 2012, 6 December 2012, 28 January 2013, 21 March 2013, 4 June 2013, 17 October 2013, and 22 November 2013,
- 4) Failed to comply with the Complaints and Client Relations Committee's direction of 28 January 2014.

6285/DT174/15

- 1) Failed to complete, and/or to take all reasonable steps to complete, title registration in respect of a named property,
- 2) Failed to disclose to the complainant that, over a period of seven years, he had not completed the registration of her title,
- 3) Failed to respond to enquiries made by the complainant's new solicitor in July 2013,
- 4) Failed to comply with assurances given by him to the complainant and the Law Society that documents would be lodged in the Land Registry,
- 5) Failed to respond adequately or at all to one or more letters sent to him by the Society, including letters dated 11 September 2013, 1 October 2013, 17 October 2013, 2 January 2014, 11 February 2014, and 7 March 2014.

6285/DT175/15

In respect of complaint one:

- 1) Failed to comply, up to the date of the expiration of the stay on the referral of this matter to the tribunal, with an undertaking to the complainant dated 25 April 2005, pertaining to a named property 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 dated 3 July 2007, 16 October 2009, 23 January 2010, 1 June 2010, 7 December

- 2010, 16 March 2011, 24 June 2011, 6 October 2011, 27 January 2012, 16 April 2012, 12 October 2012, 26 November 2012, 30 November 2012 and/or 11 February 2013,
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society dated 13 May 2013, 17 September 2013, 21 October 2013, 26 November 2013 and/or 3 January 2014,
- 4) Failed to comply with the directions of the committee dated 28 January 2014 to furnish certain documentation.

In respect of complaint two:

- 1) Failed to comply, up to the date of the expiration of the stay on the referral of this matter to the tribunal, with an undertaking to the complainant dated 13 December 2005, pertaining to a named property 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 dated 16 October 2009, 23 January 2010, 2 February 2010, 28 June 2010, 30 November 2010, 9 March 2011, 21 June 2011, 27 September 2011, 18 January 2012, 18 July 2012, 26 November 2012, 1 February 2013, and/or 11 February 2013,
- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society dated 6 June 2013, 28 June 2013, 16 August 2013, 13 September 2013, 30 September 2013, 21 October 2013, 2 January 2014, 3 February 2014 and/or 12 March 2014,
- 4) Failed to comply with the committee's directions dated 25 July 2013 to make a contribution of €500 towards the Society's costs,
- 5) Failed to comply with the committee's directions dated 25 July 2013 to furnish certain

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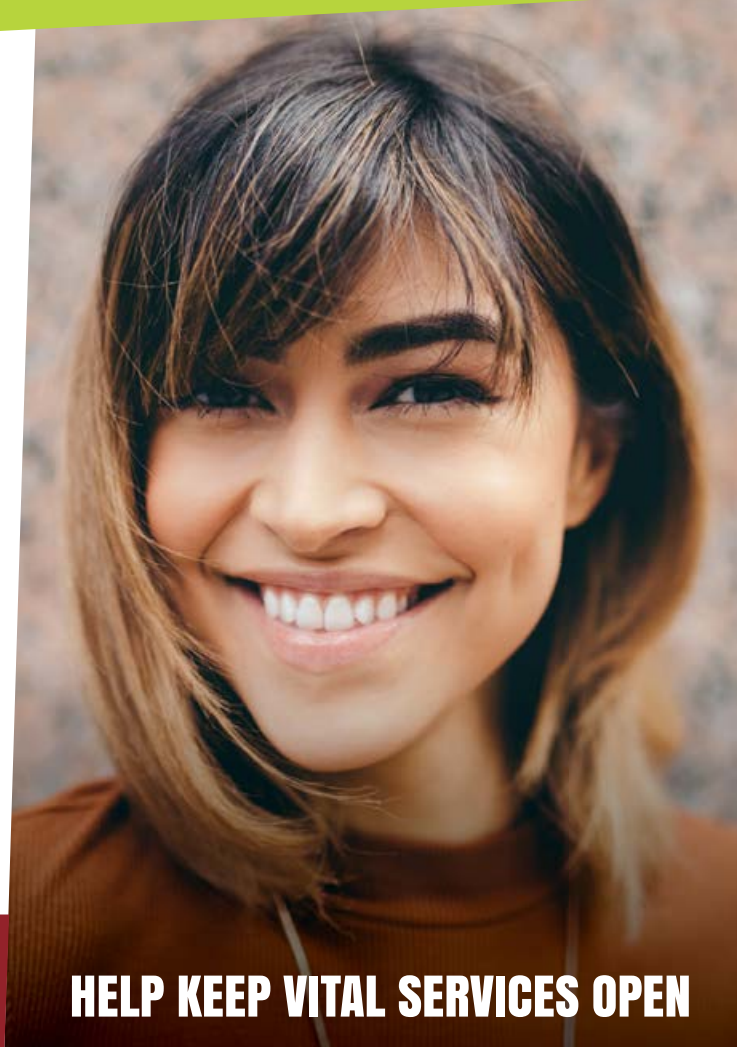
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documentation,

- 6) Failed to comply with the directions of the committee dated 28 January to furnish certain documentation.

6285/DT176/15

- 1) Failed to comply with his undertaking dated 24 September 2007 to the complainant to deal with Land Registry queries in relation to a named property 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 21 January 2008, 9 June 2008, 20 June 2012, 9 November 2012, 8 April 2013, 12 August 2013, 16 September 2013, 10 January 2014, 11

February 2014, 7 March 2014, 19 March 2014 and/or 13 August 2014,

- 3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 11 September 2014, 29 September 2014, 5 November 2014, and 26 November 2014,
4) Failed to comply with the Complaints and Client Relations Committee's direction of 28 October 2014 to make a contribution towards the Society's costs.

6285/DT177/15


- 1) Failed to comply, up to the date of the expiry of the stay on the referral of this matter to the tribunal, with part or all of his undertaking dated 10 May

2001 given to the complainant in relation to a named property 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 and/or solicitors for the complainant, including letters dated 22 August 2006, 22 August 2007, 20 February 2008, 6 July 2009, 10 March 2010, 9 June 2010, 9 August 2010, 19 October 2010, 14 June 2011 and/or 9 November 2012,
3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, including letters dated 26 February 2013, 25 March 2013, 27 May 2013, 17 July 2013, 16 October 2013, 22

- November 2013, 11 February 2014 and/or 12 March 2014,
4) Failed to comply with the Complaints and Client Relations Committee's direction dated 28 January 2014 to furnish the Society with documentation relating to the undertaking detailed above.

The Solicitors Disciplinary Tribunal referred the matter forward to the High Court and, in record number 2019/13SA, the High Court made the following orders on 18 October 2019:

- 1) That the respondent solicitor is not a fit person to be a member of the solicitors' profession,
2) That the name of the respondent solicitor shall be struck from the Roll of Solicitors. 

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Wish Mother

If you would like more information on how to leave a legacy to Make-A-Wish, please contact Susan O'Dwyer on 01 2052012 or visit www.makeawish.ie

WILLS

Coughlan, Beatrice (deceased), late of 18 Priory Court, Eden Gate, Delgany, Co Wicklow, and formerly of 20 Delgany Park, Delgany, Co Wicklow, who died on 18 February 2020. Would any person having knowledge of a will executed by the above-named deceased or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ed Allen, Rosemary Scallan & Co, Solicitors, Church Road, Greystones, Co Wicklow; DX 205007 Greystones; tel: 01 287 2905, email: ed@rosemaryscallan.ie

Cullen, Dermot (deceased), late of 46 Barnamore Park, Finglas, Dublin 11, and formerly of 203 Glasnevin Avenue, Dublin 11. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact McNerney Solicitors, Cleggan House, 46 Eyre Square, Galway; tel: 091 566 521/29, email: jenny@mcnerneysolicitors.com

Duffy, Felix Martin (deceased), late of Carga, Ballybay, Co Monaghan, who died on 18 March 2020. Would any person having knowledge of any will made by the above-named deceased please contact Coyle Kennedy Smyth LLP, Solicitors, Thomas Street, Castleblayney, Co Monaghan; DX 71 002 Castleblayney; tel: 042 974 0010, email: lsmyth@ckslaw.ie

Gill, Peter (deceased), late of Blainroe Nursing Home, Kilpoole Lower, Blainroe, Co Wicklow, formerly of 12 The Drive, Meadowvale, Arklow, Co Wicklow. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased, who died on 1 March 2020, please contact Edel O'Brien, Maguire McNeice Solicitors, 2 Eglinton Road, Bray, Co Wicklow; tel: 01 286 2399, email: bray@maguiremcneice.com

Hehir, Brendan (deceased), late of 20 Lus na Si, Mullagh Road,

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie **and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT).** The Law Society's EFT details will be supplied following receipt of your email. **Deadline for Aug/Sept 2020 Gazette: 10 August 2020.**

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*.

Miltown Malbay, Co Clare, and previously of 42 Elm Park, Ennis, Co Clare, who died on 8 March 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, please contact Pendred & Co Solicitors, 2 Ballycasey Park, Shannon, Co Clare, email: info@pendredsolicitors.ie

Kivneen, John (deceased), late of Newtown, Ballindine, Co Mayo who died on 17 January 2013. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or any firm is holding same, please contact Brian Jennings, Jennings & Co, Solicitors, Gilligan's Lane, Town Hall Road, Claremorris, Co Mayo; tel: 094 937 6652; email: info@jennings-solicitors.ie

Kivneen, Sabina (deceased), late of Newtown, Ballindine, Co Mayo, who died on 18 September 2017. 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 Brian Jennings, Jennings & Co, Solicitors, Gilligan's Lane, Town Hall Road, Claremorris, Co Mayo; tel: 094 937 6652; email: info@jennings-solicitors.ie

Lehane, Eileen (deceased), late of The Castlelands, Rathfarnham, Dublin 14, and formerly of Kanturk, Co Cork, who died on 31 July 2019. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, or if any firm is holding, same please reply by email to: NMJenkins67@gmail.com

Lowry, Philomena (otherwise Phyllis) (deceased), late of 38 Cappagh Avenue, Finglas, Dublin 11. Would any person holding or having knowledge of a will made by the above-named deceased, who died on 13 December 2019, please contact Maurice O'Callaghan of O'Callaghan Legal Solicitors, Mounttown House, 62-63 Mounttown Road

Lower, Dun Laoghaire, Co Dublin; tel: 01 280 3399, email: info@ocslegal.ie

McGill, Maura (otherwise Mary) (deceased), late of *Sacre Coeur*, Charleville Road, Tullamore, Co Offaly. Would any person having knowledge of a will made by the above-named deceased, who died on 16 March 2020, please contact McCanny & Co, Solicitors, Pollexfen House, Wine Street, Sligo; tel: 071 914 5928 or email: gerry@mccanny-solicitors.com

McMahon, Alice Rita (deceased), late of 15 Brookwood Drive, Artane, Dublin 5, in the city of Dublin, who died on 1 January 2020. Would any person having knowledge of the

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whereabouts of a will made by the above-named deceased please contact Susan Martin of Martin Solicitors, 1 Elmfield Rise, Clarehall, Dublin 13; tel: 01 487 7170; email: susan@martins.ie

Murphy, Anne (deceased), late of 10A Laurel Park, Newcastle, Co Galway. Would any person having knowledge of a will made by the above-named deceased, who died on 10 June 2020, please contact John A Sinnott & Co, Solicitors, Market Square, Ennis-corthy, Co Wexford; tel: 053 923 3111, email: info@johnsinnott.com

Walsh, Michael (deceased), late of 3 St Ignatius Avenue, Dublin 7, who died on 12 September 2019. Would any person having knowledge of any will made by the above-named deceased please contact Peter Gartlan, solicitor, 56 Lower Dorset Street, Dublin 7; tel: 01 855 7434; DX 105 004; email: info@petergartlan.ie

Wearen, Francis (deceased), late of Swords Nursing Home, Swords, Co Dublin, and formerly of 23 Thatch Road, Whitehall, Dublin 9, who died on 20 January 2020. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named deceased, or if any firm is holding same, please contact Gerard L McGowan Solicitors, The Square, Balbriggan, Co Dublin; DX 96001 Balbriggan; tel: 01 841 2115, email: info@glmcgowan.ie

Weldon, Kenneth Joseph (deceased), late of 3 Richmond Park, Wexford Town; 120 Charlemont, Griffith Avenue, Dublin; and 1 Boland's Cottages, East Wall, Dublin 3. Ken was a good and decent man and we want to make sure that his last wishes are fulfilled. Sadly, Ken passed away suddenly on 15 June 2018. He made an updated will with a Dublin solicitor in 2009 and then again in 2016. Please contact Peggy Weldon, 14715 Yearling Terrace, Rockville, Maryland 20850, USA; tel: +1 240 506 5534, email: pweldon@holychild.org

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TITLE DEEDS

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2019 and in the matter of an application by Patrick Delaney in respect of the premises known as 3 Jessyville, Summerhill South, in the city of Cork

Take notice that any person having a freehold interest or any intermediate interest in all that and those the property known as 3 Jessyville, Summerhill South, in the city of Cork (hereinafter known as 'the property'), being the land demised and held by a lease dated 14 January 1938 and made between William F O'Connor of the one part and Michael J O'Connor of the other part for the term of 150 years from 25 December 1937 and subject to the yearly rent of ten Irish pounds (£10) and to the covenants on the part of the lessee and to the conditions therein respectively reserved, should give notice of their interest to the undersigned solicitors.

Take notice that Patrick Delaney, of the Ossory, Rathdowney, Co Laois, being the person now entitled to the lessee's interest in the property, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest in the property, and any party asserting that they

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hold a superior interest in the property is called upon to furnish evidence of their title to the property to the undersigned solicitors within 21 days from the date of this notice.

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

Date: 3 July 2020

Signed: PP Ryan & Co (solicitors for the applicant), Rathdowney, Co Laois

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of property known as the lands of Gurteenaspig, now known as the yard, at 16 Westbourne Park, Magazine Road, in the parish of Saint Fin Barre and city of Cork, and in the matter of an application by Henry Thornhill

Take notice that any person having an interest in any estate in the above property that Henry Thornhill (the applicant) intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interest in the aforesaid property, and any person asserting that they hold a superior interest in the property is called upon to furnish evidence of title to the premises to the below named within 21

days from the date hereof.

Any person having any interest in the property superior to a reversionary lease of 22 November 1918 between Charles Scott Bayley on the one part and James Kennedy of the other part, of property at Gurteenaspig fronting the road called the Magazine Road in the parish of Saint Fin Barre and barony and county of Cork, and now known as Westbourne Park, Magazine Road, in the city of Cork, should provide evidence to the below named.

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

Date: 3 July 2020

Signed: Jerome A McCarthy & Co, Solicitors (solicitors for the applicants), 10C South Bank, Crosses Green, Cork

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Deirdre Lavelle (otherwise known as O'Gorman) and Malachy Louis Lavelle

Take notice that any person having any interest in the freehold estate of the following property: all that and those the hereditaments and premises situate at and known as 4a Saint Patrick's Road, Dalkey, in the borough of Dun Laoghaire and county of Dublin, being portion of the property for-

merly known as 3 Saint Patrick's Road, Dalkey, in the borough of Dun Laoghaire and county of Dublin, which said hereditaments and premises are more particularly delineated and described on the map annexed hereto and thereon coloured red, and all that and those the hereditaments and premises being the plot of ground immediately adjoining the hereditaments and premises described in the first part of the schedule hereto, and which said hereditaments are described on the map annexed hereto and thereon coloured blue, and which said hereditaments and premises are situate in Dalkey in the borough of Dun Laoghaire and county of Dublin, held under an indenture of lease dated 8 May 1912 and made between Edward Alexander Porter of the one part and Colonel Douglas James Proby of the other part for a term of 150 years from 25 March 1910, and was made partly in consideration of the sum of one shilling per year, to be paid by equal half-yearly payment.

Take notice that Deirdre Lavelle (otherwise known as O'Gorman) and Malachy Louis Lavelle intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 3 July 2020

Signed: BHSM Solicitors (solicitors for the applicant), 6-7 Harcourt Terrace, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) No 2 Act 1978 and in the matter of an application by QMK Dublin Limited

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property: known as 19 Moore Lane, Dublin 1, held under indenture of lease dated 7 June 1958 made between Aer Riana Teoranta of the one part and Gerard Byrne and Kevin Byrne of the other part for the term of 99 years from 25 March 1956, subject to the yearly rent of £200.

Take notice that QMK Dublin Limited, being the person entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin at Áras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple interest in the said property, and any party asserting that they hold any interest in the said property is called upon to furnish evidence of title to the said property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the Dublin county registrar at the end of the 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interest in the said property, up to and including the fee simple estate if appropriate are unknown and unascertained.

Date: 3 July 2020

Signed: DWF (solicitors for the applicant), 5 George's Dock, IFSC, Dublin 1

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 (as amended) and in the matter of an application by

Greybirch Limited in respect of 5 George's Quay, Dublin 2

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property at 5 George's Quay, Dublin 2, held under a lease dated 2 July 1789 between Thomond Clarke of the one part and Anthony O'Reilly of the other part from 5 April 1789 for the term of 999 years, subject to the yearly rent therein mentioned for the first 13 years of said term, and thenceforth at a yearly rent of 18 pounds, four shillings.

Take notice that Greybirch Limited, being the company now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold fee simple estate and all (if any) intermediate interests 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 the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

Date: 3 July 2020

Signed: McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2019 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 (as amended) and in the matter of an application by Greybirch Limited in respect of 6 George's Quay, Dublin 2

Take notice that any person having any interest in the freehold estate or any intermediate inter-

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ests in the following property at 6 George's Quay, Dublin 2, held under a fee farm grant dated 1 February 1861 between Richard John Wolseley of the one part and Thomas Beeby, Peter George Dumoulin, Susannah Dumoulin, Susan Beeby, Elizabeth Beeby, Jane Mongan, William Maffett and William Hamilton Maffett of the other part, forever subject to the yearly rent of £20.3.4¼.

Take notice that Greybirch Limited, being the company now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold fee simple estate and all (if any) intermediate interests 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 the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee

simple in the aforesaid property are unknown or unascertained.

Date: 3 July 2020

Signed: McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rent) (No 2) Act 1978 and in the matter of certain premises situate at the junction of Adelaide Road and Florence Road, Bray, Co Wicklow, adjacent to Bray railway station, and also known as 39b Quinsborough Road, Bray, Co Wicklow, and in the matter of an application by Glenveagh Homes Limited

Take notice any person having a freehold interest or any intermediate interest in all that and those the entire of the lands, hereditaments and premises comprised in and demised by a lease dated 21 May 1870 between (1) Mathew Quin and (2) Charles Antoine Dufresne for the term of 900 years from 25 March 1870, subject to the yearly rent of £30 (sterling) and the covenants and conditions therein contained (the lease), which lands, hereditaments and premises comprised in and demised by the lease are therein described as "all that and those that piece or plot of ground situate at the rear of the International Hotel Bray, known as the Hotel Garden, now walled in, and also any rights of passage which the said Mathew Quin may have or possess at the rear

of the said International Hotel, and lying between the said plot and the International Hotel, and which plot of ground contains in breadth to the north adjoining the International Hotel 186 feet, on the south to Mr Quin's ground 186 feet, on the east to the railway yard 187 feet, and on the west to Meath Road 187 feet, be all or any of the said admeasurements more or less and as same are more particularly described on the portion of the map in the margin hereof coloured green, all which said premises are situate in the parish of Bray, barony of Rathdown, and county of Wicklow", which premises are located at the junction of Adelaide Road and Florence Road, adjacent to Bray Railway Station, and also known as 39B Quinsborough Road, Bray, Co Wicklow.

Take notice that Glenveagh Homes Limited intends to submit an application to the county registrar for the county of Wicklow 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(s) in the aforesaid property is called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Glenveagh Homes Limited intends to proceed with the application before the county registrar for the county of Wicklow at the end of 21 days

from the date of this notice and will apply to the county registrar for the county of Wicklow for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or ascertained.

Date: 3 July 2020

Signed: A&L Goodbody (solicitors for the applicant), International Financial Services Centre, North Wall Quay, Dublin 1; ref: GOT/JYA 01-429309

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Joseph P Galvin & Company Limited

Take notice that any person having an interest in the freehold estate (or any intermediate interest) of the following properties: all that and those the premises situated at High Street, Tullamore, in the county of Offaly, once known as the Royal Arms Hotel and latterly known as Coltons Hotel, Tullamore, Co Offaly, and latterly occupied by tenants known as 'Sambodinos' and the 'Amber Chinese Restaurant'.

Take notice that Joseph P Galvin & Company Limited intends to apply to the county registrar for the county of Offaly for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they

RETIRING SOLICITOR SEEKS SUCCESSOR FOR PRACTICE

Principal solicitor, based in South Western Circuit (County town), who wishes to retire, seeks interested party to take over broad-based firm.


Retiring solicitor is available to continue as assistant if required.

Box no: 02/06/20

held an interest superior to the applicant in the aforesaid property is called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date hereof.

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

Date: 3 June 2020

Signed: Farrell & Partners (solicitors for the applicant), O'Connor Square, Tullamore, Co Offaly 

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HITLER: MY PART IN HIS DOWNFALL

A worker who was sacked after privately sharing a version of a Hitler parody video during pay negotiations has won his case in Australia's federal court, *The Guardian* reports.

The *Downfall* meme has been circulating on the internet for more than a decade and shows a furious Hitler giving his military commanders a dressing down during the final days of the war. Users add their own subtitles to the clip from the German film.

The BP technician used it to parody heated and protracted bargaining negotiations at the company, distributing the video to a private Facebook group of friends and colleagues. BP alleged the video breached the company's code of conduct. The technician



claimed unfair dismissal, which the Fair Work Commission rejected, ruling the video inap-

propriate and offensive.

He won his job back on appeal after the full bench of the com-

mission found the video to be satirical. The federal court upheld that decision.

VOM WINDE VERWEHT

A man has been fined €500 after he farted in the general direction of police in Vienna during an altercation in early June, *the BBC* reports.

The police defended the fine, saying, "Of course, no one will be reported for accidentally 'letting one go' once." The charge was for violating public decency. They said the suspect "had already behaved in a provoca-



tive and uncooperative manner" when he was approached in the early hours of 5 June.

He rose from his park bench, "looked at the police officers, and apparently intentionally released a massive burst of intestinal wind in the immediate vicinity of the officers".

The police said that members of the force "prefer not to be farted at".

'FACE-OFF' WITH JUDGE

A seasoned British barrister has received a Stg£1,000 fine for acting in a "rude and unprofessional manner" towards a judge – even to the extent of "pulling faces", *Legal Cheek* reports.

Marguerite Russell, who was called to the bar in 1972, was instructed as counsel for the defence during a three-month trial in 2016, during which she is reported to have interrupted her opponent's submissions and failed to sit down when asked to do so by the judge.

A regulatory panel found that Russell had shouted at the judge and talked over counsel, as well as describing a decision as 'insane'. She also pulled faces at the judge and acted in a manner that led to her being told to sit down.

IN CAUDA VENENUM

Need a fancy slogan for your new course or programme? Try one of these, from 'More honest Latin mottoes for your overrated university':

- *Quo plus cerevisiae, eo minus memoriae* ('the more beer, the fewer the memories'),
- *Tibi ad mortem litteras mittemus*

('we will send you letters until you die'),

- *Quinque fusi in libello, nulli in campo* ('five people of colour in our prospectus; none on campus'),
- *Veritate perempta novam sententiam petimus* ('we need a new motto, since truth no

longer exists'),

- *Quies laborum et officii* ('a repose from work and responsibility'),
- *Largitione ac donis* ('through bribes and gifts'),
- *Qui haec verba legat satis iam didicit* ('whoever can read these words has already learned enough').

gazette

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