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MR AND MRS

Judges have traditionally been reluctant to make findings of marital misconduct

WHO'S THE BOSS?

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The new 'fused' PPC course offers electives in human rights and disability law

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PREVIOUS PAGE

CONTENTS PAGE

NEXT PAGE

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gazette
LAW SOCIETY

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FEATURES

24 Protocoligorically correct
There have been increasing *prima facie* breaches of Britain's post-Brexit duties under both local and international law

30 We are family
The collaborative law model offers less prospect of long-term damage to children and parents involved in family break-up

34 The final judgment
A recent case offers a salutary reminder to the profession that those found to have behaved dishonestly should not expect leniency

38 National treasure
How does a structure get elevated to the status of 'national monument'?

42 Dr who?
Telemedicine and remote medical services raise various regulatory challenges and legal intricacies around the world

REGULARS

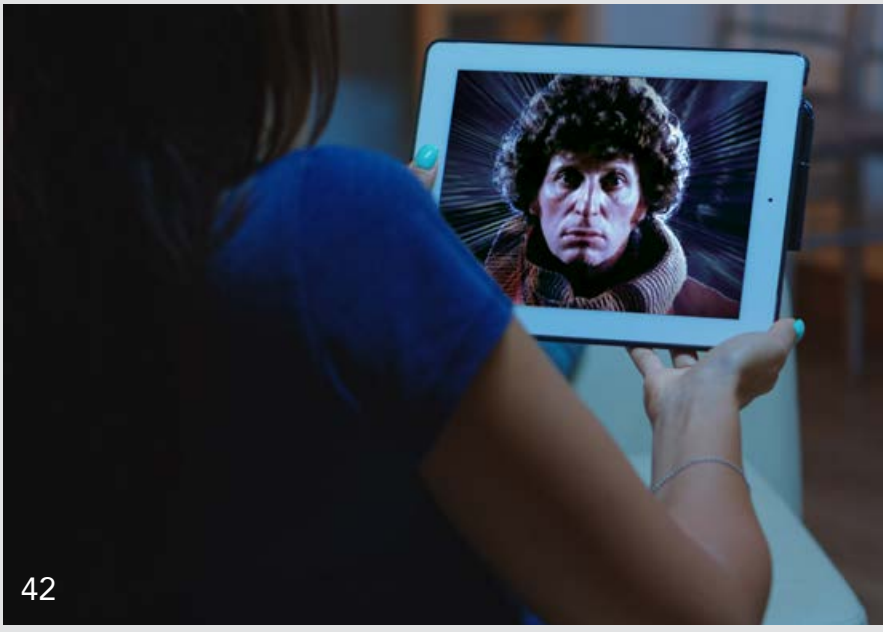
Up front
4 The big picture
6 People
14 News

Comment
19 Ask an expert
20 Most people view divorce as an end, but the law treats divorce as a beginning
22 Books: *Enjoying Claret in Georgian Ireland* and *Probation and Parole in Ireland*

Analysis
46 The *Singapore Convention* greatly facilitates international mediated settlements
50 The SMDF was rescued by the profession in 2011. What has happened since – and was it a good idea to save it?
54 The Society's new fused PPC offers modules that could lead towards a career as a 'guardian of the common good'
58 The Law Society's expanded Psychological Services aim to help lawyers reach their full potential
60 Eurlegal: The *Canon* case has important lessons for parties contemplating creative approaches to mergers and acquisitions

Briefing
65 Practice note
65 Regulation

Down the back
67 Professional notices
72 Final verdict



The influence of law

For many, the summer is the perfect time for reflection, relaxation, spending time with family and friends, or alone, to regroup for the autumn ahead. It's also an opportunity for many to take some time in the company of other lawyers to consider and address issues facing the profession. So it was a real pleasure to attend the American Bar Association's annual meeting in August with the leaders of the solicitors' and barristers' professions on these islands, across Europe, and from other parts of the world. This strikingly diverse group discussed many issues of significant relevance to practice in Ireland, including how we work as a profession, the attacks on the rule of law in many parts of the world, and the need to continue to protect fundamental rights. Unsurprisingly, the invasion of Ukraine was discussed comprehensively, and condemned unreservedly.

The importance of civility

Deborah Enix-Ross, the new ABA president, spoke very powerfully upon her appointment of the importance of civics, civility, and collaboration as the key themes for her presidency. Those themes resonated with me in considering how law influences how society conducts itself, and how we as solicitors act in our dealings with each other, as representatives of opposing parties, with the courts and legal forums, with our clients, and with the public generally.

Law is an important element of civility, worth remembering in how we treat each other and how we seek to influence society's public discourse and dispute resolution. I am glad that, in Ireland, we do not have the concerns that were being expressed about the politicisation of courts in the US. We are very fortunate to be in a jurisdiction with truly independent courts and also a legislative framework that largely protects legal rights. There is, of course, an urgent need to do much more to provide for unmet legal need and in resourcing the Irish courts, but we are in a better position than many as regards the operation of the rule of law.

We continue to be in a time of transition within the Law Society. On the last occasion, I paid tribute to the service of Mary Keane on her retirement in June and, at the end of July, two more directors took up the opportunity of early retirement from the Society. On behalf of the members, I wish to thank John Elliot (former Registrar of Solicitors and director of regulation) most sincerely for his stalwart leadership, determination, and integrity throughout times of challenge and major change.

Cillian Mac Domhnaill (former director of finance and administration) also deserves great credit for his prudent stewardship of the finances of the Law Society through many challenges, as well as the leadership he has provided across a multitude of responsibilities. These have included leading the Society's response to the pandemic, the guardianship of Blackhall Place as a historic building and as the home of the profession, and his guidance of the Calcutta Run over 24 years. They leave strong legacies.

Warm welcome

I also welcome our new directors, who are taking up their positions during August and September: Gillian Cregan as director of finance and operations, Dr Niall Connors as director of regulation and Registrar of Solicitors, and Dr Geoffrey Shannon as director of policy. All have significant experience and excellent skills that will be invaluable to the solicitors' profession.

> LAW INFLUENCES HOW SOCIETY CONDUCTS ITSELF, AND HOW WE AS SOLICITORS ACT IN OUR DEALINGS WITH EACH OTHER

I look forward to working with you all in the autumn as we advance the ongoing work of the Society, including a new project that has begun to consider the strategic direction of the Law Society over the years ahead – of which more in due course. g

Michelle Ní Longáin

MICHELLE NÍ LONGÁIN,
PRESIDENT

THE BIG PICTURE

STILL WATERS RUN DEEP

An elephant enjoys a moonlight drink, reflected under the stars at the Zimanga Private Reserve, Zululand, South Africa, on 18 August. The watering hole is shared by rhinos, elephants, water buffalo and lions

PIC: CLINT RALPH/SOLENT NEWS/SHUTTERSTOCK

Dinner to honour the Chief Justice

PIC: CIAN REDMOND

At a dinner held in honour of Chief Justice Mr Justice Donal O'Donnell on 28 June were *(front, l to r)*: Mark Garrett (Law Society director general), Ms Justice Mary Irvine (retired President of the High Court), Chief Justice Mr Justice Donal O'Donnell, Michelle Ní Longáin (president, Law Society), Mr Justice George Birmingham (President of the Court of Appeal), and Maura Derivan (senior vice-president); *(back, l to r)*: Liam Kennedy (Law Society Council member, and partner, A&L Goodbody), Owen O'Sullivan (managing partner, William Fry), Mary Keane (then deputy director general, Law Society), Michael Jackson (managing partner Matheson), Stephen Holst (managing partner, McCann FitzGerald), and Declan Black (managing partner, Mason Hayes & Curran)

Louth marks county registrar's retirement

The Louth Solicitors' Bar Association held a dinner in honour of Mairead Ahern to mark her recent retirement as county registrar. Attending the event held at Ballymascanlon House Hotel, Dundalk, were *(front, l to r)*: Catherine MacGinley, Mairead Ahern, Tim Ahern, Judge Mary O'Malley Costello, Judge Flann Brennan and Judge Matthew Deery; *(middle, l to r)*: Hugh Mohan SC, Paul Moore, Joseph Smith (county registrar, Monaghan/Cavan), Eithne Coughlan (county registrar, Kildare), Ciaran Oakes BL, and Jonathan Kilfeather SC; *(back, l to r)*: Judge John Coughlan, Judge John O'Hagan, Judge Pat Quinn, and Judge Raymond Groarke

A meeting of minds at Blackhall Place

ALL PICS: CIAN REDMOND

Presidents and secretaries representing 23 bar associations were hosted by Law Society President Michelle Ní Longáin on 19 July at Blackhall Place. This meeting of minds provided an opportunity to brief the bar association representatives on issues of importance to the profession. Equally, the presidents and secretaries shared their views with the Society on issues of importance to them. Among the matters discussed were PII, solicitors' accounts, cybersecurity, the new fused PPC, Law Society Psychological Services, the Society's new website, and updates on the profession's response to the crises in Ukraine and Afghanistan. The Society is grateful to all participants for taking time out of their busy schedules to attend and share their views

Blackhall Place hosts Ukrainian lawyers

ALL PICS: CIAN REDMOND

The Law Society hosted an information and networking event on 28 July for Ukrainian lawyers now living in Ireland due to the Russian invasion. In all, 107 attended the event, including 67 Ukrainian lawyers, who were provided with detailed guidance about practising law in Ireland and the supports available to them from the Law Society and the Bar. Organisers and speakers *(pictured)* included Simon Treanor BL (Law Society), Michelle Nolan (head of member services), Éamonn Conlon SC, Anna Bazarchina BL, Katherine Kane (Law Society), Patricia Harvey BL (Law Society), Aonghus Kelly (Irish Rule of Law International), Michelle Ní Longáin (president, Law Society of Ireland), Maura McNally SC (chair, Council of the Bar of Ireland), Mr Justice Richard Humphreys, Denise Brett SC, Niamh Counihan (Matheson), Jane Creaner-Glen (Matheson), and Sarah Lalor (Arthur Cox)

TSBA's Premier County gathering

ALL PICS: TOM RYAN CASEY PHOTOGRAPHY

Pictured at the Tipperary Solicitors' Bar Association president's dinner on 17 June 2022 at the Cashel Palace Hotel were committee members Paddy Cadell, Gary Kingston, Donal Smyth, Kathleen Burke, Richard Joyce, JJ Fitzgerald (president), Aidan Leahy, Dermot O'Dwyer, Maura Derivan, John Carroll, and Marcella Sheehy

James Seymour (county registrar), Judge Elizabeth MacGrath, JJ Fitzgerald (president, TSBA), Judge Alice Doyle, and Judge Brian O'Shea

Declan Fitzgerald, Olwen Kingston, Paul Kingston, Kathleen Burke, and Ann Marie Osborne

Paddy Cadell, Caroline Cadell, Ger Manton, Suzanne Manton, Sinead Kennedy, and Kevin Collins

Stellar family lawyer honoured

PIC: CIAN REDMOND

The Law Society held a dinner in honour of family-law practitioner Joan O'Mahony on 20 July. The event marked her 51st year of being qualified as a solicitor, as well as her stellar contribution to the Family Law Committee, of which she has been a member since the mid-1990s; *(front, l to r)*: Joan O'Mahony, Law Society President Michelle Ní Longáin, and Helen Coughlan; *(back, l to r)*: Seán Kinsella, Aidan Reynolds, Jacqueline O'Mahony, and Michael V O'Mahony

Fundraiser nets over €7K

PIC: LENSMEN

At the handover of a cheque for €7,240, which were the proceeds from the 'Nets of Wonder' event in aid of the Irish Motor Neurone Disease Association, were Dr Geoffrey Shannon SC (Law Society), Sally Anne Sherry (Donegal/Dublin Business Network), Law Society President Michelle Ní Longáin, Brian McMullin (solicitor and main sponsor of the event), Jackie Martin (IMNDA), and Lillian McGovern (CEO, IMNDA)

Bloomsday parchments in darling Dublin

ALL PICS: JASON CLARKE PHOTOGRAPHY

The Law Society held a parchment ceremony for newly qualified solicitors on 16 June. Among the special guests were Barry Andrews MEP, Mr Justice Paul Burns (High Court), Judge Kathryn Hutton (Circuit Court), and Judge Paul Kelly (President of the District Court). The new solicitors were welcomed to the event by Law Society President Michelle Ní Longáin, director general Mark Garrett, and Richard Hammond SC (chair, Education Committee)

Odhran Brennan and Ned Brennan

Gillian Farrell, Susanna Meindl and Kerry Corbett

Lorna Verdon, Phillip O'Leary, Anne Leahy, Conor Bates, Ruth Long and Patrick Cagney

Ian McCarthy, Phillip O'Leary and William Foley

First in-person diploma conferrals since 2019

ALL PICS: CIAN REDMOND

The Diploma Centre hosted three conferral ceremonies in spring and summer 2022 – the first in-person conferral ceremonies held since autumn 2019. This was the first time that many of the students had met in person, having completed their diplomas online during the pandemic. Pictured is the Diploma in Construction Law class with *(front, l to r)* Suzanne Crilly (Diploma Centre), Deirdre Flynn (diploma manager), Mr Justice Max Barrett, Judge Petria McDonnell, Richard Hammond SC (chair, Education Committee), Claire O'Mahony (head, Diploma Centre), Riona Leahy (Diploma Centre) and Geraldine Rafferty (course leader)

The Diploma in Judicial Skills and Decision-Making with *(front, l to r)* Suzanne Crilly (course leader), Deirdre Flynn (diploma manager), Mr Justice Max Barrett, Judge Petria McDonnell, Richard Hammond SC (chair, Education Committee), Claire O'Mahony (head, Diploma Centre), Riona Leahy (Diploma Centre), and Geraldine Rafferty (Diploma Centre)

Building your career

The Law Society will host a free professional training conference entitled 'Building Your Career: Tools of the Trade' on 6 October 2022, at 4.30pm at Blackhall Place, Dublin 7.

The event (presented by the Younger Members Committee in partnership with Law Society Professional Training) will focus on career progression for junior members of the profession – from post-qualification through to partner track – as well as alternatives to traditional legal roles. Topics will include networking, generating new business, managing client and employer expectations, delegation, negotiation, personal brand development, and the legal jobs market.

To register and for further details, see the 'courses' page of the 'Education and CPD' section on lawsociety.ie.

Ukrainian lawyers advice event

The Law Society hosted an information and networking event on 28 July for Ukrainian lawyers now living in Ireland due to the Russian invasion of their country. More than 100 attendees at the Law School event heard guidance on practising law here and about the supports available to them from the Society and the Bar.

Ian Ryan (traineeship executive) set out the steps needed to practise law in Ireland for those with external qualifications. He spoke about training contracts, the FE1s, and the PPC route to qualification as a solicitor. He also addressed funding options and the various access scholarships run by the Society.

Simon Treanor BL (practice regulation executive) explained that reserved legal services under the *Solicitors Acts* could only be provided by a practising solicitor or barrister. These include litigation, conveyancing, and probate. The term 'solicitor' was also protected by law, he said, adding that the title for a lawyer qualified in another jurisdiction who is not on the Irish Roll would be, for example, 'lawyer (country qualified – Ukraine)'.

Recruitment representatives from some of Dublin's larger firms (including Arthur Cox, A&L Goodbody, and Matheson) spoke to attendees, who heard that networking was a great way to enter the job market in Ireland. Attendees were advised that specific legal skills should be flagged to organisations that might have an interest in them.

Anna Bazarchina, of the Association of Ukrainian Lawyers, expressed her heartfelt thanks to the Society for organising the event. She said that her association would do everything possible to continue to assist Ukrainian lawyers in Ireland.

IBA calls for release of Russian lawyer

The International Bar Association (IBA) has condemned the arrest and pre-trial detention of a Russian lawyer who criticised his country's invasion of Ukraine.

The IBA says that Dmitry Talantov (president of the Bar Association of the Republic of Udmurtia, in west-central Russia) has been charged with the dissemination of "deliberately false information" under a new Russian law – article 207.3 of the *Russian Criminal Code*. This covers "public dissemination of knowingly false information about use of the Russian armed forces abroad, and execution by the Russian government bodies of their powers, committed with motives of enmity or hatred".

Talantov has been detained since 28 June, after he posted comments on Facebook on 3 April. On 19 August, the Cheryomushki Court of Moscow extended his detention to at least 23 September.

The IBA president, Sternford Moyo, called for Talantov's release and for all charges against him to be dropped. He argued that the arrest and prolonged detention of the lawyer was an example of the authorities in Russia disregarding the country's constitution: "Article 29 of the Constitution of the Russian Federation guarantees freedom of thought and speech to everyone. It contains the right to freely seek, receive, transmit, produce and disseminate information in any legal way," said Moyo, who added that the reality was "very different".

Law Society names three new directors

Dr Geoffrey Shannon, director of policy

Gillian Cregan, director of finance and operations

Dr Niall Connors, director of regulation

Solicitor and senior counsel Dr Geoffrey Shannon will be the new director of policy for the Law Society, succeeding Mary Keane, who has retired after a distinguished career.

Dr Shannon has been the deputy director of education and a lecturer in family and child law at the Law Society since 2001. He is also a renowned national policy expert, having written or co-written over 30 books coverings areas such as health-and-safety law, insurance law, and child and family law. Dr Shannon is the recipient of several awards for his work in national and international family law. He was chair of the Adoption Authority of Ireland from 2007 to 2020, and special rapporteur on child protection from 2006 to 2019.

Other appointees include Gillian Cregan, who has been appointed director of finance and operations. She takes over from outgoing director Cillian MacDomhnaill. Gillian joins the Law Society from Business Venture Partners and has extensive leadership experience in global and local financial-services firms.

Dr Niall Connors has been appointed director of regulation, succeeding John Elliot, and moves from the Irish Aviation Authority. Dr Connors has worked in the aviation industry for over 30 years and takes up his role with the Society in early September.

Watchdog to review An Bord Pleanála

The Office of the Planning Regulator has begun its review of some of the systems and procedures used by An Bord Pleanála (ABP) to carry out its statutory planning functions.

The review was signalled early in August by Minister for Housing, Local Government and Heritage Darragh O'Brien. It will look at the robustness and effectiveness of the organisation of work and governance arrangements within the planning body's board. It will cover the board's decision-making practices – including how it handles potential conflicts of interest and how case files are allocated and assigned.

The watchdog said that the review would take place in two stages, due to the "urgent need" to put in place measures to restore confidence in ABP.

The first part will be led by Conleth Bradley SC and will include Paul Cackette (formerly head of the Scottish Government's Legal Directorate, and chief reporter of the Directorate of Planning and Environmental Appeals) and John McNairney (former chief planner to the Scottish Government). This will be completed on or before 3 October 2022.

Part two of the review will be carried out by Paul Cackette and John McNairney and will be completed on or before 30 November.

The business of wellbeing

Following the success of previous wellbeing summits, the Law Society has announced another free online live webinar on 11 October 2022.

This year, the Business of Wellbeing Summit will look at dignity at work and how it can be applied in small, medium, and large-sized firms. It will also offer evidence on how a dignity-at-work culture can lead to thriving employees, and, as a result, a thriving business.

For more information and to register, visit www.lawsociety.ie/wellbeingsummit2022.

SBA AGM

Notice is hereby given that the 158th annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Tuesday 20 September 2022 at 12.30pm.

It will consider the directors' report and financial statements for the year ending 30 November 2021, elect directors, and deal with other matters appropriate to a general meeting. A copy of the directors' report and financial statements can be viewed on the association's website at www.solicitorsbenevolentassociation.com.

ENDANGERED LAWYERS

TONYEE CHOW HANG-TUNG BL, HONG KONG

Tonyee Chow Hang-Tung (38) gave up doctoral studies in geophysics in Cambridge to return to Hong Kong, and become involved in human-rights activism in 2010. She was called to the bar in 2016 and joined Harcourt Chambers.

The Hong Kong Alliance organised annual vigils to commemorate the 1989 Tiananmen Square protests. Chow was convicted for inciting and taking part in an unlawful assembly on the occasion of the vigil in 2020, and for organising the event in 2021.

In June 2021, on the arrest and imprisonment of two senior members of the Hong Kong Alliance, she (as vice-chair) became the convenor and urged people to "turn on the lights wherever you are – whether on your phone, candles or electronic candles". She was arrested for promoting an unauthorised assembly, bailed, rearrested, detained, then let out on bail on 5 August 2021, subject to handing over all travel documents.

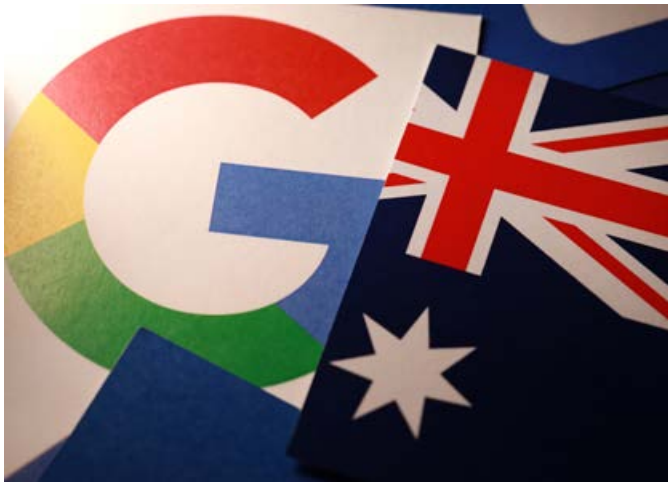
She was arrested again on 8 September 2021, after the alliance had rejected a demand by police to surrender information regarding allegations that it was an "agent of foreign forces". On 9 September, Chow was charged (alongside the two other leaders) and the alliance itself with "incitement to subversion".

On 10 September, the court rejected her bail application on the latter charge. On 13 December, she was sentenced to 12 months in prison. On 4 January 2022, she was jailed for another 15 months over the banned 2021 vigil – the judge ordered ten months of the sentence to be served consecutively with the December sentence, meaning that Chow was to spend a total of 22 months in jail. She currently faces up to ten years in prison on the charge of inciting subversion.

On 12 October 2021, the UN Human Rights Council said that four of its experts had submitted a detailed analysis to the Chinese government regarding the national security law. In its criticism of the law, which the council described as exhibiting "fundamental incompatibility with international law and with China's human-rights obligations", it specifically expressed deep concern about the arrest of Chow and about her right to a free trial, in view of her having been denied bail twice.

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

Google held to be not liable for libel



Australia's High Court has ruled that Google is not a publisher, which means it cannot be held responsible for defamatory content, *writes Mary Hallissey*.

"In reality, a hyperlink is merely a tool that enables a person to navigate to another webpage," a joint statement by Chief Justice Susan Kiefel and Justice Jacqueline Gleeson said.

On 18 August, the court overturned a ruling that found Google had engaged in defamation by supplying a link to a contentious newspaper article. The seven-judge panel threw out an earlier finding that the company played a part in publishing the disputed article by acting as a 'library' housing it, saying the website had no active role.

Last year, the High Court found a newspaper publisher liable for defamatory comments left beneath an article it had posted on Facebook. The difference was that the media companies last year "invited and encouraged comment", while Google "did not provide a forum or place where it could be communicated, nor did it encourage the writing of comment in response", the judges wrote. Some newspaper publishers have stopped allowing commentary beneath articles posted to social media.

Arbitration – NY and Irish style

Law Society ADR Committee members Karen Killoran and Michael Carrigan featured on a panel alongside colleagues from the New York State Bar Association and Irish American Bar Association of New York at a well-attended joint arbitration webinar on 19 July.

The discussion touched on key procedural aspects of arbitrations seated in Ireland and New York, aspects of each jurisdiction's arbitral law, typical approaches to discovery/disclosure in each jurisdiction, and issues relating to the enforcement of arbitral awards in Ireland and New York.

Courts body extends digital jury pilot

● A pilot for a new digital jury system, which has been running in Mayo, has now been extended to Kilkenny, Waterford, and North Tipperary.

The Courts Service says that the new system will provide an easy-to-use, simple online interface. It will allow people to reply to a jury summons, check their status, and access helpful information. Anyone who has received a jury summons in these counties can now reply online at https://jury.courts.ie. The Courts Service originally centralised the process of calling people for jury service in Castlebar, Co Mayo.

A four-person team based in a new Jury Summons Unit took on many of the administrative activities involved – work previously carried out by staff in local county offices.

A review of the move in 2020 found that it had delivered savings of €300,000. Figures released at the end of 2021 also showed that the centralised office had issued 420,000 jury summonses over the previous two years.

New president for British Irish Chamber

● Solicitor Maree Gallagher has been appointed president of the British Irish Chamber of Commerce at the organisation's AGM.

Gallagher (Covington and Burling LLP, Dublin) had served as vice-president from 2020 to 2022. At Covington, she advises clients on EU law and policy in the areas of food and life sciences.

As the first woman to serve as president of the chamber, the solicitor also pledged to seek to ensure that her appointment would help to empower women in business.

IRLI IN AFRICA

THE PLIGHT OF IMMIGRANT PRISONERS

Norville Connolly (IRLI), Hilda Musaluke (volunteer prison worker), Jean Paul Nguechu, and Teresa Chimasha (volunteer prison worker), at Lusaka Airport prior to Jean Paul's departure flight

● Earlier this year, IRLI visited Lusaka, Zambia, to identify systemic gaps in legal capacity. We visited the Central Prison and heard about some 'immigrant' prisoners, including Jean Paul Nguecheu.

Jean Paul (35) was from Cameroon and, in 2018, left there by road to try to get work in another country. In 2020, he was arrested by the Zambian immigration authorities. He paid a fine but was taken to prison until he could produce an airline ticket back to Cameroon. It was clear that he and his family in Cameroon could not afford a ticket. As the authorities do not make such payments, Jean Paul had been in prison since 2020 and would remain there indefinitely, as there was no hope of a ticket being obtained.

We spoke with the Prison Pastoral Care Ministry (PPCM) and the immigration office, helped considerably by Hildah Musaluke and Theresa Mwila, volunteers with the PPCM. IRLI doesn't normally have the capacity to help individual prisoners but, having met Jean Paul, we could not ignore his plight. Accordingly, IRLI funded a ticket for Jean Paul to Cameroon and some necessary expenses. Jean Paul was brought to the airport on 9 June by immigration officers. We were with him in the prison that morning and went to the airport to help and reassure him regarding his travel.

His mother and brother travelled to meet him at Douala International Airport. He was very excited and emotional. We monitored him until his safe arrival. On speaking to him several hours later, he told us: "My mother is still dancing since I arrived!"

IRLI is researching other prisoners in the same situation. There are eight prisons in Lusaka alone, holding nearly 4,000 prisoners. We understand that there are many in Jean Paul's situation. Once we have the information, we will seek sponsors to fund the return journeys for some of them. Law firms and others who might be interested in assisting with this work, and the work of IRLI, can contact me at nconnolly@irishruleoflaw.ie.

Norville Connolly is a past-president of the Law Society of Northern Ireland and is country director of IRLI programmes in Zambia and Tanzania in a voluntary capacity.

out·source
ANNUAL CONFERENCE 2022

"The winds of change.... and landscape of tomorrow"

- The changing shape of the legal market and the likely winners and losers
- The impact of new entrants into the Irish market
- Is it time to change the rewards system? How can this be made self-funding?
- The changing nature of support staff roles and the need to differentiate between these roles.
- Is there an optimum hybrid working policy? Does it differ by firm size and by role?
- Effective performance management systems for law firms – what works?
- Retirement options – both internal and external and the funding and cashflow implications
- Economic outlook – where is the economy heading? Is there scope to increase pricing and what evidence is there of price increases in the market?
- Where to invest in a negative interest rate environment – Pensions? Property? Stock Markets?
- The imminent changes to the Solicitors Accounts Regulations, what is required – what they entail and current areas of emphasis.
- This year's Professional Indemnity Insurance renewal - have prices peaked and are there new entrants?
- Cyber insurance – is it still worth it after the price increases and the reduced pay-outs? How does this cover interact with the PII policy?

CPD Hours 4/5:

3 Management & 1 Regulatory hours available (1 free Solicitors Accounts Regulatory hour available also to all attendees)

Price

1 delegate €110, 2 delegates from the same firm €210, 3 delegates from the same firm €290, 4 delegates from the same firm €360
The above pricing includes 1 free hour on Solicitors Accounts Regulations

Dates

This year practitioners will have the choice of attending in person or online.

Wednesday 19th October	9am to 1pm – Hotel Kilkenny
Thursday 20th October	9am to 1pm – online via Zoom
Friday 21st October	2pm to 6pm - The Courthouse, Galway
Tuesday 25th October	9am to 1pm – The Radisson Blu Hotel, Dublin
Wednesday 26th October	9am to 1pm – Imperial Hotel, Cork
Thursday 27th October	9am to 1pm – Savoy Hotel, Limerick

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Our 'Ask an expert' section deals with the wellbeing issues that matter to you

Drawing the line

Q Since I began hybrid working, I have a lingering feeling that I have unfinished work to do and find it hard to 'leave it at the office' when my office is at home. I find myself up late at night preparing for meetings and end up feeling exhausted. At weekends, I find myself logging on to reply to a client or review a contract that has just come in. My manager emails me during the weekend, to which I always reply as I don't wish to fall behind. As a result, I end up missing time with my young family. It's been putting a lot of stress on my relationships. How can I regain some space between my work and personal time?

A Stress is inevitable – however, 'stressed-out' does not have to be. Stress happens when we stop doing the things that are good for us. Protect your time by setting boundaries. The key to personal and professional effectiveness is self-care.

Balancing time for others with time for self is a sign that you value and respect yourself. Strong boundaries are vital in maintaining healthy relationships, as we need time for our family and friends. Having a boundary around your home life ensures that your time and energy are available to your partner, your children, and your family.

Here are some helpful ways to create strong and healthy boundaries:

- Remember, you can do anything – just not everything.
- How do you feel? What do you need? We can only give what we have got. If your reserves are used up, everyone will benefit if you take the time and attention you need. Block time for yourself. Protect your time, since saying 'yes' to everything means that you end up always saying 'no' to yourself. Learn to say 'no'.
- Four Ds – there are things I need to 'do', and some I need 'delay', 'delegate' or 'dump'.
- Staying connected has never been more important, so reach out and express how you feel. Try setting a date night with a partner or enjoy one-to-one time with your child, which makes a child feel valued and secure. Balance is what is required.
- Move from reacting. 'E+R = O' ('event' plus 'response' equals 'outcome'). We may not be able to change the event (for example, COVID-19), but we can change how we respond to it. With a different response, we may achieve a better outcome. By changing nothing, nothing changes.

Build healthy habits

Limit email checks, and try including a walk at the end of the day to switch off. Managing your attention helps you to work smarter. Try to focus your attention on your priority task for up to 90 minutes (muting distractions), and then take a short break. It may be helpful to set office hours and log off at the end of the day. Resist going 'back online' after work, as you need to recharge – unless it is essential – and set a time limit if you do.

Take responsibility for self

When you do not 'draw the line', you may end up in conflict. Only one person needs to change in a given situation to effect change in our lifestyle. Nothing changes until we install boundaries; otherwise we may become defensive, and conflict may arise.

Taking responsibility for self is crucial: "I'd like some quiet time for myself, and I'd like not to be disturbed." This is an action for yourself, as otherwise you will take an action against another (raise your voice, etc). We all know the key to wellbeing is diet, sleep, exercise, and relaxation. If we are not doing this, there is a deeper issue around self-worth. ("How is it that I am not looking after myself?")

Remember

You deserve the time, you are worth the time and, as you treat yourself with value and respect, others will do the same. You deserve taking care of, so start loving yourself a little more every day. We need to value ourselves and value our time, so that we have time for the things we value. Draw the line!

To submit an issue that you'd like to see addressed in this column, email ps@lawsociety.ie. Confidentiality is guaranteed.

This question and answer are hypothetical and were written by Sheila O'Malley (wellbeing professional trainer and public speaker on personal, workplace and family issues – see sheilaomalley.ie). Any response or advice provided is not intended to replace or substitute for any professional psychological, financial, medical, legal, or other professional advice.

LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day, and can be contacted at 1800 814 177. Visit the Law Society Psychological Services website for more information.

Beginning or the end?

Most people view divorce as an end, but the law treats divorce as a beginning, say Inge Clissmann SC and Ciara McLoughlin

A FINDING OF MARITAL MISCONDUCT CAN HAVE GREAT VINDICATORY PURPOSE IN DIVORCE PROCEEDINGS FOR THE SURVIVOR, BUT THE QUESTION REMAINS WHETHER, AND TO WHAT EXTENT, IT SHOULD INFLUENCE THE FINANCIAL PROVISION BETWEEN THE PARTIES

In divorce proceedings, the law seeks to provide separate futures for parties, without concerning itself with the wrongs of their past.

Realistically, a fault-based system would be ineffectual, as the breakdown of a marriage is multifaceted, and 'he said, she said' arguments are better left outside courtroom doors. Judges take a more removed approach, and aim to decide how best to undo the binds of a contract for which the parties tied the knot, without attributing liability.

Couples often create a situation of dependency when they marry, and the key task for a judge is to decide how to divide assets in a way that facilitates independent living and provides security for the future.

Of course, the touchstone of faultless proper provision has an exception to confirm the rule.

Section 20(1) of the *Family Law (Divorce) Act 1996* enables a judge to take the conduct of the parties into consideration when determining what constitutes proper provision where it would be "unjust to disregard it".

In *T v T* (2002), Keane CJ endorsed the 1973 English decision in *Wachtel v Wachtel*, which states that it is unjust to disregard misconduct within a marriage where it is "gross and obvious". Keane CJ set a very high threshold for 'gross and obvious' misconduct, as he held that not even the actions of a husband who abandoned the family home to have a child with his mistress could be considered as marital misconduct. In his view, the course of their marriage's demise was unfortunate, but it is not the role of the 1996 act to apportion blame.

Faultless system

On foot of this decision, judges have traditionally been very reluctant to make findings of marital misconduct, or even to entertain allegations of it.

However, three recent decisions (2020) of the High Court appear to loom large over our faultless system and, perhaps, demonstrate an increased willingness to allow misbehaviour to influence financial provision. All three judgments were handed down by Barrett J in the High Court. (One of the decisions is under appeal.)

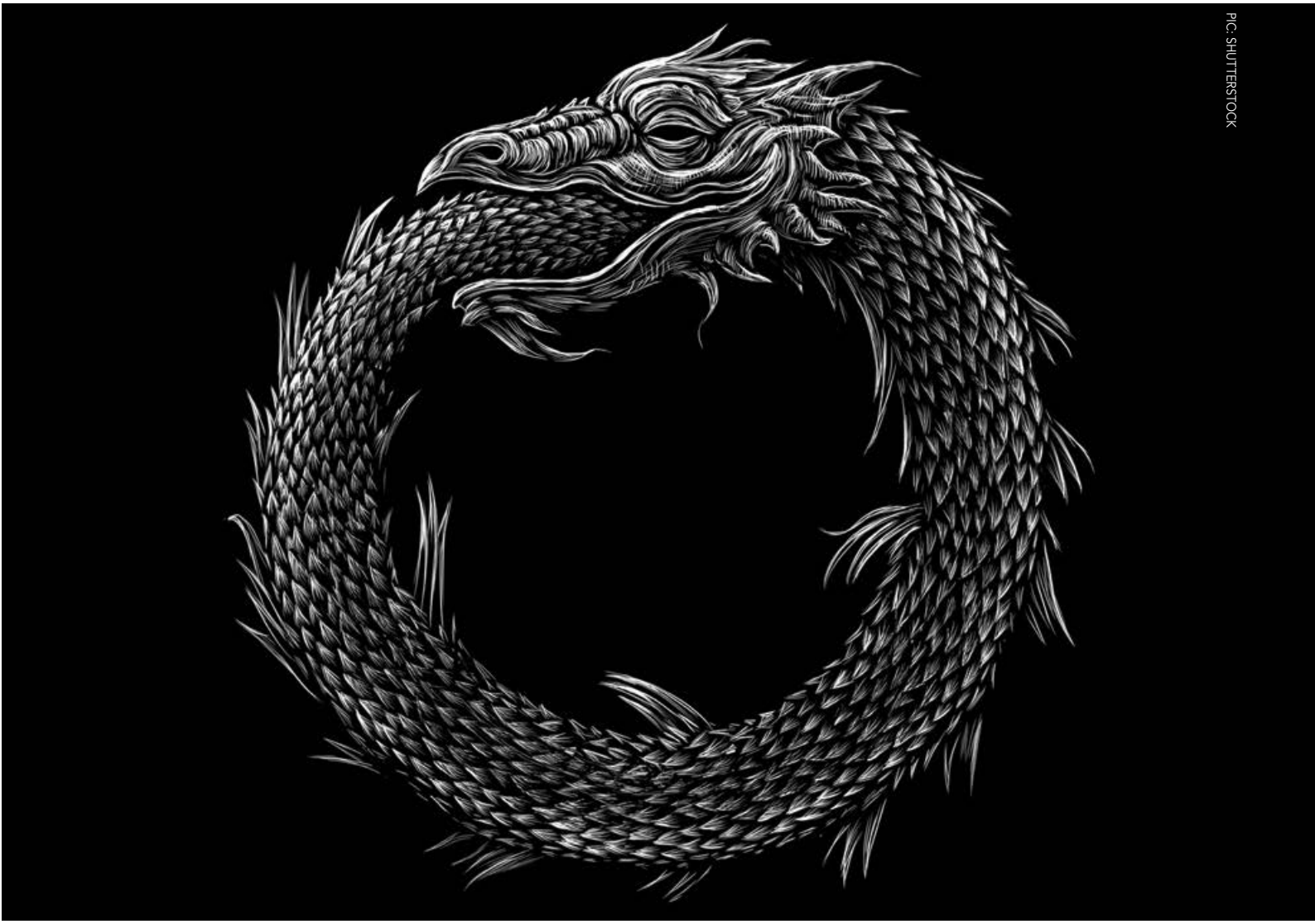
M v S concerned divorce proceedings between parties who lived in a partitioned home. Multiple interim barring orders were obtained against the respondent, leading Barrett J to conclude that the respondent had "behaved towards the applicant in what, to put matters mildly, is so discreditable a manner as to bring himself within the 'obvious and gross' conduct contemplated by Lord Denning in *Wachtel*". However, he held that this finding of misconduct had no impact on the financial provision of the parties, as their means were limited, and penalising the respondent would only result in hardship.

A similar conclusion was reached in *Y v Z*. The husband in these proceedings engaged in appalling behaviour, including physical assault of his postpartum wife, death threats, verbal assault, and emotional abuse. Barrett J once again made a finding of marital misconduct but did not "engage in *Wachtel*-style reduction" due to the scarcity of funds.

A third instance of marital misconduct was found in *A v B*. Barrett J condemned the behaviour of the respondent as he disturbingly attempted to justify striking his wife to the court. The judge made clear that "there is no context in an intimate relationship in which domestic violence is permissible".

It is understood that a *Wachtel*-style reduction was made in this case, as the judge asked how the court was to make proper provision between a model wife and a 'husband from hell'? However, by leaving his question unanswered, it is unclear what kind of impact the respondent's behaviour had on the financial provision ordered.

Together, these cases can be viewed as a clear triumph for women's rights. Three women who endured forms of violence/abuse behind closed doors heard



PIC: SHUTTERSTOCK

a judge call out their aggressor in court and scold them for their wrongs.

Symbolic merit?

A finding of marital misconduct can have great vindicatory purpose in divorce proceedings for the survivor, but the question remains whether, and to what extent, it should influence the financial provision between the parties.

Pragmatically speaking, misconduct generally will only be a feature of 'big-money' cases. If the High Court felt that it could not reduce financial provision in two of the above cases, I certainly see no place for such a finding in the Circuit Court, where the means of the parties are usually even more restricted.

Furthermore, it is regrettable that the degree to which marital misconduct should reduce financial provision was not clearly stated in *A v B*. It is difficult for practitioners to advise clients (be they the aggressor or the survivor) on the likely division of assets where allegations of misconduct are made, and whether it is advisable to take any settlement option proposed.

Thirdly, if the purpose of the 1996 act is to avoid a fault-based system, are misconduct allegations better dealt with in the tort or criminal sphere, where the appropriate evidence is produced and standards of proof are met?

Though these decisions certainly have symbolic merit, by virtue of fiscal punishment, the parties are borne back ceaselessly into their past.

Inge Clissmann SC is a Dublin-based barrister, accredited mediator, member of the Family Lawyers' Association of Ireland, and a fellow of the International Academy of Family Lawyers. Ciara McLoughlin is a legal researcher with a particular focus on child and matrimonial law.

LOOK IT UP

CASES:

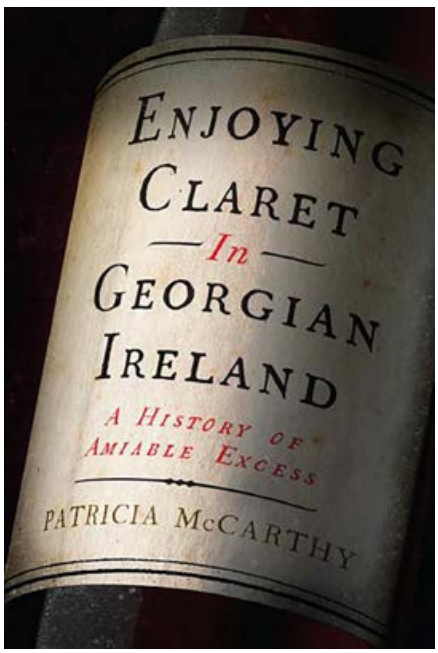
- *A v B* [2020] IEHC 610
- *M v S* [2020] IEHC 562
- *T v T* [2002] IESC 68
- *Wachtel v Wachtel* [1973] EWCA Civ 10; All ER 829
- *Y v Z* [2020] IEHC 611

LEGISLATION:

- *Family Law (Divorce) Act 1996*, section 20(1)

Enjoying Claret in Georgian Ireland

Patricia McCarthy. Four Courts Press (2022), www.fourcourtspress.ie. Price: €36 (incl VAT).



Coffee tables of Ireland, prepare to receive a real beaut. In contemporary Ireland, one tends to be well-versed in anecdotes about the demon drink. Who then can resist picking up a book with a front cover showing an image of a labelled bottle containing the enigmatic title *Enjoying Claret in Georgian Ireland*, followed by the tag-line *A History of Amiable Excess*. This raises the immediate double-query of what is claret and who is the author – who, in the first lines of her introductory acknowledgements, questions her own initial misgivings about her qualifications to address the subject. Patricia McCarthy is an architectural historian who is also the author of two previous books: *A Favourite Study: Building the King's Inns* (2006); and *Life in the Country House in Georgian Ireland* (2016).

One can readily compliment the author's progression from tracing the history of this, the fifth Inn of Court (the other four being in London), to writing about Irish high-society, country-house living in years long past; and then, in this book, addressing the subject of wine consumption in all its manifestations, whether in big houses or elsewhere. Well done, Patricia: with this literary pedigree, you are more than qualified to write on the subject.

From its introduction, through its eight distinct chapters, up to the concluding epilogue – laced throughout with portraits of notable personalities and satirical cartoons of the time – one is drawn constantly to the extensive notes to answer the question, 'Where did that tit-bit come from?'

For the initially less informed, Georgian Ireland is centred on the 18th century, by which time the red wines of Bordeaux became generally known as claret (from the old French *claret*, meaning clear or light-coloured). In this time period, wine had become the preferred alcohol of the Irish-based nobility and upper classes, including (Anglican) bishops; while whiskey was the preference of the lower classes. In the Irish context, the societal reputation of a big-house owner largely depended on the peer-perception of his (always his) ability to provide memorable wining and dining occasions.

This book is full of information and first-hand descriptions of amiable diversions, at times both serious and amusing, about how the other half lived, drank, and ate in those far-off more class-conscious days – but, at the same time, one must be conscious that excessive alcohol consumption was not the sole prerogative of 18th century manhood.

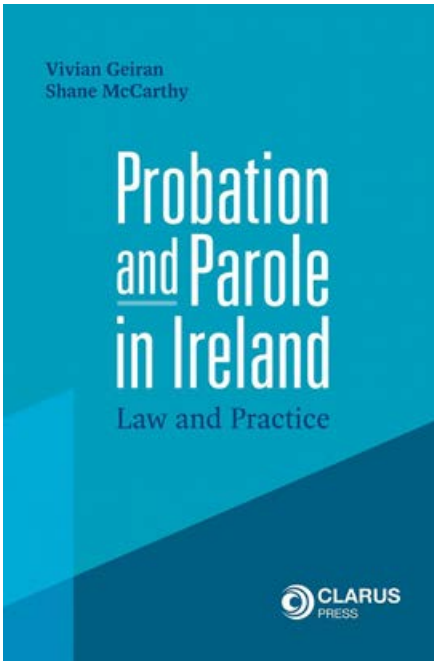
If this book were to sit visibly on the coffee table of a host entertaining a small coterie of amiable guests, one could be confident that it would catch the eye and be opened with curiosity, the chapter headings being an immediate draw. Who could resist diverse headings touching on wine cellars, Irish wine merchants in Bordeaux, dining and wining, paraphernalia of wine-making, male-bonding and toasting, Dublin Castle revellers, role of the monasteries, and wine as a medicine?

This book is recommended – both for drinkers and non-drinkers!

Michael V O'Mahony is a past-president of the Law Society of Ireland.

Probation and Parole in Ireland

Vivian Geiran and Shane McCarthy. Clarus Press (2022), www.claruspress.ie. Price: €45 (incl VAT).



With the recent commencement of the *Parole Act 2019*, the publication of this book is perfectly timed. The authors are pre-eminent experts in the field: Geiran is a former director of the Probation Service, and McCarthy is the foremost authority in Ireland on parole – each with enormous practical experience.

The substance of the book deals with offenders who are either being managed in the community, or who, being very long-term prisoners, are aiming to be released from custody but will remain under supervision. The net is cast wide, and deals with child offenders (a very tricky topic), community service, the nascent concept of restorative justice, the derisory attempts to introduce electronic monitoring and, of course, the central topics of probation and parole.

For the most part, the authors avoid controversy. The statutory Parole Board, under the chairmanship of retired Judge Michael White, will be a due-process model, replacing the Interim Parole Board (itself as far removed from due process as possible for a body concerned with the liberty of citizens). But the book is silent on those shortcomings, as it is on the role of victims in the new process – they being entitled to be represented and heard and, presumably, to have their opinions taken into account. This is a controversial question, but not addressed.

Lavish attention is paid in the book to the assessment of risk, generally equated with dangerousness, and the authors note both the limitations and limiting effects of such assessments – correctly, in my view. Certainly, the erstwhile interim board proceeded with extreme caution. Will the new board be less conservative?

On a wider penological note, the issue of preparing long-term prisoners for release into the community is canvassed. The authors present a superb case, based on a review of multiple studies in numerous jurisdictions, for the laying of a proper groundwork towards reintegration: housing, employment, health needs, and the like. For most practising criminal lawyers, these are statements of the obvious, but hopefully this book will have a wider audience, who might pay attention.

The social environment into which most long-term prisoners are released is not conducive to a productive life – family and other bonds have been stretched or broken, and the future is often bleak. Notwithstanding all of that, statistics (quoted here with some reservation) suggest a relatively low rate of reoffending for such a cohort of offenders. But not reoffending does not equate with full reintegration into society – ostensibly an aim of the *European Prison Rules*. Without actually saying so, the authors suggest that there is a good deal to be done here.

This book is at once a significant work of scholarship, a review of the community-based services for offenders, and a handbook for criminal practitioners who need to understand how the processes of probation and parole work. The second edition will presumably reflect on the operation of the new board. In the meantime, it is highly recommended for all who work within the criminal justice system. g

Dara Robinson SC is a partner in Sheehan and Partners LLP.

PROTOCOLIGORICALLY *correct*

'Brexit' has been law since 1 January 2021, but there have been increasing *prima facie* breaches of Britain's duties under both local and international law. Duncan Grehan reminds us that the CJEU has jurisdiction to determine any alleged breach of the *Withdrawal Agreement* – which is subject to the laws of the EU

PIC: ALAMY

The sincere observance by all state parties of their international treaty duties determines their reputation. After World War 1, the *Versailles Treaty* and its protocol, the *Covenant of the League of Nations*, both effective from 10 January 1922, had short lives, as their functions and objectives of security and peace by diplomacy became redundant.

The 1946 *UN Charter*, as World War 2 ended, however, recited its clear purpose – "to save succeeding generations from the scourge of war" – and the consequential need for sincere cooperation and good faith by its parties. Article 26 of the *Vienna Convention on the Law of Treaties 1969* provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Article 27 states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Non-compliance is a breach of the rule of law.

International and internal

The disorderly implementation of the Brexit treaty, formally the *Withdrawal Agreement*, is causing legal analysis of conflicts between international treaty duties and internal law.

Following the referendum on 26 June 2016, the Westminster government gave its Brexit notice to the EU per article 50 of the *Treaty on European Union*, which requires it to perform an "orderly withdrawal". Following lengthy negotiations, the terms of the agreement were agreed on 19 October 2019. The agreement included the *Protocol on Ireland and Northern Ireland* (and similar protocols for Cyprus and Malta). Both were transposed into UK domestic law (by the *European Union (Withdrawal) Act 2018*) by royal assent on 23 January 2020, and the *Withdrawal Agreement* was ratified on 29 January 2020, but allowing for a 'transition period' ending on 31 December 2020.

Brexit has been UK law since 1 January 2021. Agreed by its domestic law, the *Withdrawal Agreement*, and the *Northern Ireland Protocol* is that Northern Ireland shall remain in the EU Single Market for the life of the protocol, which will die on 1 January 2025,unless extended for a further four or eight years. Extension requires "democratic consent" by a majority of the MLAs "present and voting" in the Northern Ireland Assembly. Some 52 of its 90 current elected MLAs do want the protocol extension.

Prima facie breaches

There are increasing *prima facie* breaches of the UK's duties under local and international law. Outstanding are delays and non-cooperation in implementation of the law agreed by Brexit, and by the increasing number of unforeseen unilateral measures taken by the UK Government and its executive – contrary to the *Withdrawal Agreement*, without prior consultation and the prior consent of the EU.

Such measures include the continuing extension of the transition period (now by over two-and-a-half years), despite the fact that it had been agreed as ending on 31 December 2020. Further examples include the failure to apply many EU laws (in breach of article 12(1) of the *Northern Ireland Protocol*, which also lists many applicable EU laws in its Annex 5), as it particularly agreed, so as to honour and keep secure the EU legal standards for manufactured goods and agricultural goods entering the EU through its Northern Ireland back door. This failure is thereby jeopardising the EU's integrity.

The UK has not developed nor supplied, on any cooperative basis, entry-and-exit security technology, nor adequate regular hard and soft data on the movement of such goods, as it had agreed to do. It proposes, instead, to do so at some time. It awaits the EU's agreement to alter its *Withdrawal Agreement* duties, many of which it has not implemented.

The UK government unilaterally announced its general idea to fulfil its *Withdrawal Agreement* duty to carry out Irish Sea border controls by self-regulation and self-certification, whereby its 'trusted traders' would enter the EU Single Market in Northern Ireland, simply by using drive-through 'green lanes' and 'red customs lanes' at its ports.

Such a self-centred system opens the back-door risk of illegal-goods movement, smuggling, breaches of EU internal-market standards and its harmonised movement controls, and a need for a hard border between Northern Ireland and the rest of Ireland. This one-sided approach threatens non-compliance with Britain's fundamental international-treaty duties under the *Withdrawal Agreement*, and also under the *Belfast/Good Friday Agreement 1998*, by which it agreed no hard border between Northern Ireland and Ireland. The former endorses its committal in the latter "to protect the North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls".

The on-record attitude of the UK Government to the *Northern Ireland Protocol* was published on 12 May 2020 in what it calls its 'Command Paper'.

It acknowledged, even then: "Self-evidently, goods being sent away from the Single Market cannot create a back door into it; and any such goods subsequently leaving the UK would be subject to both exit and entry checks anyway *en route* to their new destination."

Unilateral changes

The new *Northern Ireland Protocol Bill*, without prior consent, notice, or any assistance first being sought from its good friends in the EU, was introduced to the House of Commons on 13 June 2022 and unilaterally scraps the *Northern Ireland Protocol* duties of the UK. Rather than complying with what it has agreed in the *Withdrawal Agreement* and the protocol – namely that UK law would be different for that part of the UK that is Northern Ireland, and which should now have a customs and other controls border at its ports to respect EU integrity – section 1 of its bill "provides that enactments, including the *Union with Ireland Act 1800* and the *Act of Union (Ireland) Act 1800*, are not to be affected by the *Northern Ireland Protocol* that does not have effect in the United Kingdom".

This bill seeks to counteract the March 2022 judgment of the Court of Appeal of Northern Ireland in *Allister and Ors* (before its appeal to the Supreme Court has been decided), in which it is held that the *Withdrawal Agreement* and the protocol and the 2018 act implementing both into UK law "prevail over any previous historic UK primary constitutional legislation, especially the *Act of Union 1800*".

PIC: GAZETTE STUDIO/WIKIMEDIA COMMONS

> THE UK GOVERNMENT APPEARS TO BE USING DELAY AND THIS REQUIREMENT TO SEE THE *NORTHERN IRELAND PROTOCOL* EXPIRE WITHOUT IT EVER HAVING BEEN IMPLEMENTED

In *Allister*, many issues of UK law are clarified, and many are under appeal. As noted above, international customary and written laws in treaties and conventions are binding on all state parties by their ratification, and as expressly provided in treaties like the *Treaty on the Functioning of the European Union*, the *European Convention on Human Rights*, and the *Vienna Convention*.

UK law offers less accessibility to certainty, especially in relation to its duties to comply with the rule of law. This is not assisted by its indistinct, unwritten constitution and the status of its primary constitutional legislation, and how this is so categorised. Lady Justice Keegan stated (paragraph 123 in *Allister*): "Parliament may place limits upon its own sovereignty by virtue of some Acts of Parliament, such as the *European Communities Act 1972*, and the *Human Rights*

Act 1998. However, there has not been a court case where judges in the UK have ruled that an Act of Parliament is contrary to the rule of law and therefore unconstitutional."

This is contradicted by article 27 of the *Vienna Convention*, by which the rule of law cannot be revoked or overridden by domestic legislation.

The *Allister* case alleged, among other things, that Brexit was unconstitutional because it introduced discrimination for those traders and persons in Northern Ireland in conflict with their equality rights as UK subjects. In particular, it claimed it was a breach of their constitutional right as provided, on the historic creation of the UK, in article VI of the *Act of Union 1800*, which provides "that in all treaties made by His Majesty, his Heirs, and successors, with any foreign power, His Majesty's subjects of Ireland shall have the same privileges, and be on the same footing, as His Majesty's subjects of Great Britain".

Keegan LCJ dismissed the plaintiff's claim, explaining: "The more general words of the *Act of Union 1800*, written 200-plus years ago in an entirely different economic and political era, could not override the clear specific will of Parliament, as expressed through the *Withdrawal Agreement* and protocol, in the context of the modern constitutional arrangements for Northern Ireland."

So, this *dicta* overturns the maxim '*communis error facit ius*', and this leads to the open questions around justiciability, judicial sovereignty, and parliamentary sovereignty – and whether they are defined by the domestic laws of the UK.

Justiciability and sovereignty

Keegan LCJ, in her *obiter dicta*, found that the legal term 'prerogation' effectively fetters 'justiciability': "Prerogative powers, such as those relating to the creation of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of parliament, and the appointment of ministers as well as others, are not, I think, susceptible to judicial review because their nature and subject matter is such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner, or parliament dissolved on one date rather than another."

She explained in her judgment that, while parliament can fetter its own sovereignty (by a statute like the *European Communities Act 1972*), it cannot fetter the sovereignty of its successors.

Can judicial sovereignty be fettered by common-law precedent judgements? Again, this is uncertain, as there are many types of these: an original precedent creates and applies a new rule; a declaratory one applies an existing one; an authoritative one is binding; but a persuasive one is not, although worthy of consideration. Therefore, both in UK law and the laws of Ireland, the maxim '*stare decisis*' applies conditionally. Judicial sovereignty is not absolute and, while it can permit and result in statute law or ministerial orders being found by the court to be illegal, new statute laws and orders can be subsequently made. Britain has not yet seen UK statute laws and orders that do not comply with the rule of law being found by its court of final appeal to be illegal. New precedent decisions creating new law and overturning old ones can also subsequently be made.

> THE UK HAS NOT DEVELOPED NOR SUPPLIED, ON ANY COOPERATIVE BASIS, ENTRY-AND-EXIT SECURITY TECHNOLOGY, NOR ADEQUATE REGULAR HARD AND SOFT DATA ON THE MOVEMENT OF SUCH GOODS, AS IT HAD AGREED TO DO. IT PROPOSES, INSTEAD, TO DO SO AT SOME TIME

Under the laws of Ireland (although the Constitution states "the decision of the Supreme Court shall in all cases be final and conclusive"), the commentary is that a court is not bound to perpetuate an error of law in a previous decision of court, or which is "not in harmony with modern legal values" (*Kelly*, p537). *Communis error facit ius* applies, and laws can be changed if wrong.

Safeguard measures

Perhaps this is why the *Withdrawal Agreement* and protocol provide so-called 'safeguard measures' that permit both or either the UK and/or the EU to unilaterally take such measures. These treaty provisions permit both the EU and the UK to take unilateral measures without the prior consent of both parties if the complex conditions to such permission are interpreted by the CJEU as having been first fulfilled. Article 16(1) of the *Northern Ireland Protocol* will be subject to interpretation. It is unclear yet whether interpretation is to be by a strict use and application of its words, or by identifying and applying the underlying purpose of those selected legislative words.

Keegan LCJ referred to the protocol as "a dense and complicated instrument" (paragraph 136). Its article 16(1) says such 'unilateral measures' "shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation". What that may mean depends on the reason given for the invocation of such measures. First off, there must be justifying proof, given that the grounds for their invocation are that it is the (long-awaited, full) application of the protocol that triggers the right to activate safeguard measures. The protocol has, so far, yet to be fully and properly activated. Implementation of its terms has been delayed.

Article 16(1) also names only two grounds sufficient to satisfy the right to exercise unilateral measures, specifically "serious economic, societal or environmental difficulties

that are liable to persist", or "diversion of trade". But those grounds can only apply "if the application of this protocol leads to" them happening. The second one appears an easier-argued ground. Diversion of trade from the UK internal market because of wide tariff- and control-free-movement-rights within the 27 states of the EU was always foreseeable. Since the May 2020 'Command Paper' – which stated that 57% of the exports of goods from Northern Ireland were to the UK internal market – much has changed, and there has been a huge increase in its exports to the EU via Ireland because the UK's legal duty to control the origins and standards of such export goods is being exercised with lenience or is entirely absent.

National-law measures

Again, article 27 of the *Vienna Convention* states that no party can invoke its internal laws as justification for "its failure to perform a treaty".

In the *Northern Ireland Protocol Bill*, introduced on 13 June 2022, the protocol's article 16(1) complex trigger test is unilaterally simplified to a subjective test at the discretion of an authorised minister. The justification threshold for the article 16(1) second ground (diversion of trade) to kick in is low, when seen subjectively and locally by a NI Assembly unionist minister. Delay in this bill – which effectively scraps the *Northern Ireland Protocol*, and would not perform the protocol, and would block its *Withdrawal Agreement* treaty duties becoming law – is certain to continue because of the termination of Boris Johnson's role as prime minister pending UK general elections; the passing of the bill through the Houses; and the pending decision of the Supreme Court on the appeal against the concurring judgment of the three-judge court delivered on 13 March 2022 by Keegan LCJ.

The protocol ceases if the NI Assembly is not reconstituted before the protocol extension deadline on 31 December 2024, and if the protocol is not extended for another four years by the "democratic consent" of "cross-community" elected members who are "present and voting" in the assembly. The UK government appears to be using delay and this requirement to see the protocol expire without it ever having been implemented.

The orderly withdrawal from the EU required by article 50 of the *Withdrawal Agreement* has been dishonoured. It was to be honoured, too, by its contemporary *Trade and Cooperation Agreement* (TCA), and by the Joint Declaration of the EU and UK on future financial regulation and cooperation. On 23 June 2022, the House of Lords' European Affairs Committee reported: "Under the UK-EU Joint Declaration, the memorandum of understanding (MoU) was due to be agreed by March 2021. Although technical negotiations did conclude on 26 March 2021, over a year later, the MoU has still not been signed or entered into force."

It also reports: "The committee regrets the fact that the UK-EU MoU on regulatory cooperation is still not in place, despite technical negotiations having concluded more than a year ago. The committee notes the widespread view that the MoU has become a casualty of wider tensions between the parties, particularly regarding the implementation of the protocol on Ireland/Northern Ireland."

Good faith

The duties of the rule of law require orderly implementation, sincere cooperation, and good faith. No UK statute law has yet ever been held by the UK court of final appeal (in an authoritative precedent decision) to be in breach of the rule of law and, therefore, unconstitutional.

The *Withdrawal Agreement* – an international treaty between the UK and EU (and its 27 member states) – and its four-year-term *Northern Ireland Protocol*, ratified by the UK on 29 January 2020 (two-and-a-half years ago), provides in its agreed article 5: "The Union and the United Kingdom shall, in full mutual respect and good faith, assist each other in carrying out tasks which flow from this agreement … This article is without prejudice to the application of Union law pursuant to this agreement, in particular the principle of sincere cooperation."

The *Withdrawal Agreement* is subject to the laws of the EU, and therefore the CJEU has jurisdiction to determine any alleged breach of it, or issue to which the agreement may give rise.

Duncan Grehan is a member of the Law Society's EU and International Affairs Committee.

LOOK IT UP

CASE:

- *Allister and Ors v The Secretary of State for Northern Ireland* [2022] NICA 15

LEGISLATION:

- *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* [2019/C 384 I/01]
- *Belfast/Good Friday Agreement 1998*
- *European Union (Withdrawal) Act 2018*
- *EU-UK Trade and Cooperation Agreement*
- *Northern Ireland Protocol Bill 2022*
- *Protocol on Ireland and Northern Ireland*
- *Treaty on European Union*
- *Vienna Convention on the Law of Treaties 1969*

LITERATURE:

- Hogan and Whyte (1994), *JM Kelly: The Irish Constitution* (third edition) (Butterworths)
- House of Lords' European Affairs Committee report (*The UK-EU Relationship in Financial Services*, 23 June 2022)
- Joint declaration of the EU and UK on future financial regulation and cooperation

WE ARE FAMILY

Lawyers Muriel Wall and Pauline Tesler are evangelists for collaborative law, and believe that the model offers less prospect of long-term damage to the children and parents involved in family break-up. Mary Hallissey reports

"Fully-litigated settlements in family separation and divorce matters are the least desirable way for a family to resolve their issues," says California-based lawyer Pauline Tesler, who is a strong believer in a collaborative model of justice in family law.

"I think we can fairly say that all litigated divorces are done poorly," she adds. "It's like the emergency room in the intensive care unit. You've got to have it, it must be good, and you can't live without it. But you don't want to start there," she says.

Tesler believes that the collaborative model offers a higher goal, and less prospect of long-term damage to the children involved.

Dublin-based collaborative law practitioner Muriel Walls agrees, saying that the model offers a far less 'bludgeoning' approach, because it is a process that aims to avoid harm to children, families, and important friendships.

Different approach

The 'collaborative divorce' approach starts quite differently from adversarial advocacy, which frames the entire matter as a zero-sum game, taking an oppositional win/lose stance on each possible point.

In court-settled proceedings, because nobody emerges with their real concerns addressed in a way that feels just and fair, there are often repeated modifications motions for as long as the issue remains alive, says Wall.

In contrast, a successful collaboration leaves both spouses content with what they've agreed, because they know all their concerns have been respected and the resulting compromises are reasonable and 'good enough'.

This is how collaborative divorce settlements avoid the revolving door of court-settled resolutions, with all the attendant financial costs and emotional damage.

On the one hand, the original negotiated settlement is not revisited, because both find it satisfactory – in sharp contrast to court-based orders and settlements that made everyone unhappy from the start, says Tesler. And, as life goes on and changes arise that affect children or supported spouses, these are treated as normal reasons to return to collaboration for creative problem-solving,

PIC: ALAMY

rather than as a cause for arguments and a return to court.

What this means is that the collaborative model takes the divorce judgment, not as the end of the lawyer's work, but as the beginning of a very challenging period when clients begin the actual recovery from the divorce.

Profound changes

"The 18 to 24 months after entry of judgment is when the most profound changes start to take place. The money has now been divided, separate households are set up, maybe somebody must move for work-related purposes, maybe there's a blended family that results," says Pauline.

That is why the model encourages people to consider child-related agreements as being tentative working drafts, since flexibility is a quintessential necessity for children.

The lawyers and other professionals who work together in the collaborative divorce model remain available to their clients during that period of rapid change. This is one of the most powerful advantages for clients in working collaboratively, because for reasons of judicial economy, a court will generally require a significant change of circumstances before it will even permit a hearing to modify orders about children or support.

That requirement does prevent excessive overuse of court resources, says Pauline, but it acts as a barrier to getting much-needed help when children and families encounter predictable changes and challenges after the divorce judgment has been entered.

Creative problem-solving

Another unique feature of collaborative divorce, Muriel Walls explains, is its emphasis on creative problem-solving, conducted face to face in discussions that include both sets of lawyers, both clients, and other professional helpers.

It's difficult to hide behind fixed thinking in a model where ideas are shared quickly, and then immediately evaluated and improved by collective efforts. This is how novel solutions outside the capacity of court-based proceedings can be accomplished, says Muriel.

"What happens in the courtroom is based upon a minuscule amount of information compared to what's generated in these conversations about the welfare of children and families," says Tesler. "A divorce is simply a financial separation – but with children, you're bonded for life."

The key asset here is relationships, both lawyers say.

"That's always the values-based priority: that none of our work will damage the relationships that have to flourish after the divorce, so that everyone in the family system can recover and live a good life," they add.

Collaborative practice

Collaborative practice, as an interdisciplinary team model, was developed in California after an initial beginning in the US Midwest. The teams include specially trained mental-health professionals and financial specialists (accountants, financial planners, and wealth managers) who work alongside the lawyers and participate in negotiations sessions, as well as working separately with each party.

The concept is based on an understanding of divorce as the collapse and restructuring of a family system. This needs a skilled system of professional helpers as a 'container' around it to help the spouses negotiate the challenges of separation and divorce, and reach resolution entirely outside the courts system. This 'container' provides coordinated resources for the inevitable conflicts and challenges that occur during and after the formal divorce process.

Pauline has conducted several previous training sessions in this country, and there is a committed band of collaborative practitioners in Ireland already.

In the collaborative model, the professional team has sophisticated conflict-management tools at its disposal: "We are all going to work together to get through it constructively, with commitments designed-in at the front end on intentions, transparency, good faith, and behavioural guidelines.

"We assume that it's going to be a rocky ride. We normalise it with clients and get a commitment from them to work in a systems-based way, educating them about the nature of their system collapse, and restructuring," Pauline explains.

"Once people commit to that, they wish to self-regulate, because it's embarrassing, as much as anything else, to fail. They have already failed in their own eyes in the most serious commitment that they've made to another human being – their marriage – and we're giving them an opportunity to regain integrity as they move through the divorce."

Pauline describes collaborative-divorce representation as meeting people at both their highest and lowest potential – and never knowing 'who' she will meet on any particular day. "The power of normalisation and of a 'systems-based container' cannot be overstated in dealing with the emotional rollercoaster that our clients are riding," she explains.

How expensive?

Clients always ask whether collaborative divorce is expensive. Both Muriel and Pauline answer that the cost is always less than doing it in an adversarial manner.

Young couples on two incomes with few assets and no children might find mediation more economical than collaboration, provided that they can engage in respectful and rational discussions. But even those couples may have challenging issues to work out, and collaboration always provides more structure and support for difficult conversations than either mediation or adversarial representation can offer.

There are some divorcing spouses who are so impaired or dysfunctional that they simply don't have the capacity for the civility, honesty, and good-faith negotiations that are required for collaborative divorce.

"We try to screen those people out at the start," says Pauline, " but if they do become involved in a collaboration, it will be costly, because their need for professional help is so great and their ability to resolve their own issues is so small. However, for them, every other way of doing it is likely to be even costlier."

Pauline views the population of divorcing couples as a bell curve, with about two-thirds of them falling within a normal range in terms of the frequency and intensity of the emotional upheavals involved and in terms of their ability to move from conflict to resolution when working with capable collaborative professionals. "We can work very effectively with these couples," she says.

But if severely impaired outliers – the 5% of the divorcing population at the high-conflict end of the spectrum – slip through screening, it can't help being a rougher ride. "That's because nobody can work effectively with these people," Tesler adds.

Serious mental or emotional disorders or substance-

> I'M NOT EXAGGERATING WHEN I SAY IT'S A CONVERSION EXPERIENCE. IF YOU ARE POWERFULLY CONVINCED THAT THIS IS THE WAY WE WERE MEANT TO DO FAMILY LAW, THEN YOU WILL TAKE THIS IDEA AND RUN WITH IT!

abuse issues will thwart the efforts and tax the skills of any professionals involved. "In that situation, like everyone else, we do the best we can, but it's fair to say that, unlike adversarial professionals, collaborative lawyers will at least never be guilty of fanning the flames of conflict," says Pauline.

"But such clients, if we can identify them at the start, will probably do better with reasonable solicitors who trust one another and can engage in friendly traditional negotiations outside the presence of their clients. That's an approach that doesn't ask highly impaired clients for more than they can bring to the table."

Muriel Walls agrees that one vital skill in collaborative law is effective screening of the clients. "I'm relying on my colleague on the other side to make sure their client is fully on board with the interdisciplinary collaborative model and the 'financial neutral'. And you know, some people won't sign up to that," she adds.

"We're not out to have everybody," Pauline agrees, "but we have decades of experience to show that it does work, and there is solid research behind it."

Voice of the child

Muriel and Pauline agree the that collaborative divorce model is unparalleled when it comes to issues relating to the parenting of children.

"I haven't had a collaborative case in which irrational conflicts about the children persisted for more than the first conversation or two," Pauline notes.

This is because the professional team in such cases ordinarily would include not only mental-health specialists who provide skilled coaching for the parents, but also a child specialist who acts solely as a specially trained conduit of the voice of the children in the process.

Without this method, Tesler believes, each parent in an inflamed custody dispute truly believes that they are the only thing standing between the children and some sort of post-divorce catastrophe at the hands of the other parent.

And lawyers in conventional practice often fan those flames because they see it as part of their job to get their client more time with the children at all costs, without realising the damage that approach typically causes.

Where there are collaborative coaches and a child specialist involved, each parent soon comes to understand the pain they are causing to their children from fighting about access to them. That is when the parents are ready to learn, gradually, how much their children need a relationship with both parents, despite the imperfections both may have.

> THERE ARE SOME DIVORCING SPOUSES WHO ARE SO IMPAIRED OR DYSFUNCTIONAL THAT THEY SIMPLY DON'T HAVE THE CAPACITY FOR CIVILITY, HONESTY, AND GOOD-FAITH NEGOTIATIONS THAT ARE REQUIRED FOR COLLABORATIVE DIVORCE. WE TRY TO SCREEN THOSE PEOPLE OUT AT THE START

And that is when they are ready for help in working out a plan for shared parenting in the best interests of the children.

Challenging cases

In very challenging cases, the team will modify the process to get things done, because some participants need a great deal of help if they are to participate in a creative, respectful process and reach an outcome that considers the best interests of all members of the family system.

Muriel explains that, in such situations, the collaborative process can bring the mental-health coaches into the negotiating room, where they can help clients manage their emotional reactions, and thereby defuse escalating situations without the need for adjournments that are the only tool available to a traditional lawyer: "Having them in the process is really powerful," she comments.

Pauline adds: "People who might otherwise end up in high-conflict litigation can actually rise to the occasion when we offer them these resources."

In addition to coaches and the child specialist, the other member of the collaborative team is the 'financial neutral', who changes the financial-disclosure process from weaponising information into using it as a shared resource.

The commitment is to full disclosure by both parties on financial affairs. And the financial neutral is the one with the skills to gather documentation, analyse it, locate gaps, ask questions, consider tax matters, and explain the financial picture, so that everyone at the table understands it fully.

"It's one of the things that distinguishes this from family mediation in my mind," Tesler says.

Dawning realisation

Though mediation can be a very useful tool for high-functioning couples, even these can benefit where there are complex assets and income streams.

While collaborative lawyers have the same lawyerly ethical duty to assist their clients to the maximum extent possible, they don't automatically assume that more of everything at all costs is the most important goal.

When lawyers train in collaboration, there is often a dawning realisation of the pain that high-conflict divorces cause, because of an unexamined approach to legal advocacy.

"This isn't just another arrow in the quiver for solicitors. When they really understand the power of the collaborative model to help clients achieve deep and durable resolution, it really transforms how family lawyers think about the job description and the purpose of our work," says Pauline.

"I'm not exaggerating when I say it's a conversion experience," she concludes. "If you are powerfully convinced that this is the way we were meant to do family law, then you will take this idea and run with it – and nobody can stop you!"

The Association of Collaborative Practitioners will be running interdisciplinary training in collaborative law at the Ashling Hotel, Dublin 7, from Friday 16 to Saturday 17 September, from 10am to 5pm each day. To book, see https://acp.ie/training-events.

Mary Hallissey is a journalist at the Law Society Gazette.

PIC: SHUTTERSTOCK

THE FINAL JUDGMENT

The decision in *Law Society v Doocey* offers a salutary reminder to the profession that those who are found to have behaved dishonestly should not expect leniency from the courts, warns Eoghan O'Sullivan

ime and again, the courts have stressed that, because they are entrusted with their clients' money, solicitors must be held to the highest standards of probity and integrity – that, for public trust and confidence in the profession to be maintained, those who are found to have engaged in deceitful or dishonest conduct will be subjected to the most serious disciplinary sanctions.

A recent case presented the Court of Appeal with an opportunity to consider the current state of the law concerning dishonesty on the part of solicitors. The court's decision in *Law Society v Doocey* has yet again highlighted the serious consequences that await those who behave in a manner that brings the profession into disrepute, while also offering a helpful clarification as to the nature of the test to be applied in determining whether a person has been guilty of dishonesty in the disciplinary context.

Shortly after her admission to the Roll in 2014, Ms Doocey established a practice as a sole practitioner in rural Ireland. She was initially very successful. In May 2018, however, a significant number of issues of concern were identified during a solicitors' accounts investigation, in particular that a deficit of approximately €169,000 had arisen on her client account.

A complaint was made to the Solicitors Disciplinary Tribunal and, ultimately, the solicitor admitted 24 separate allegations of misconduct. In addition to acknowledging that she had allowed a

IT IS A CARDINAL AND BASIC RULE THAT SOLICITORS MUST NEVER TOUCH CLIENTS' MONIES. NOT ONLY DID THE RESPONDENT REPEATEDLY BREACH THAT RULE, BUT SHE DISHONESTLY SOUGHT TO COVER HER TRACKS UNTIL SHE WAS CAUGHT BY HER OWN PROFESSIONAL BODY WHO UNRAVELLED THE FALSITUDE OF HER ACTIONS

deficit to arise on her client account, she accepted that she had diverted monies between client accounts to conceal the deficit that had accrued; that she had created a false statement of account for the purposes of concealing her actions; that she had failed to record transactions for the purposes of concealment; and that she improperly transferred monies from her client account into her office account.

Overwhelmed

In mitigation of sanction, the solicitor explained that she had become overwhelmed as her practice had grown, the pressures on her time being such that she had not kept on top of her accounting obligations. The deficit that had developed was caused, she said, by naivety, inexperience, and a haphazard approach to bookkeeping, rather than any malign or dishonest motivation. She was resolute in maintaining that she had not benefitted personally from the shortfall in the account and pointed to the fact that, by the time of the hearing, the deficit had been made good using monies sourced from her family and, thus, there was no question of any client having suffered a financial loss.

The tribunal decided against recommending strike-off, suggesting instead that a strict set of conditions be attached to the solicitor's practising certificate, effectively requiring third-party oversight of all of the practice's financial dealings.

The President of the High Court declined to follow the tribunal's recommendation, concluding that nothing short of strike-off would be appropriate, having regard to the dishonesty inherent in the solicitor's admitted misconduct. In her view, notwithstanding the mitigation that had been put forward on the solicitor's behalf, strike-off was necessary – not only to maintain the reputation of the profession, but also to mark the court's disapproval of the solicitor's conduct; to discourage others in the profession from engaging in similar conduct; and to adequately protect the public: "Whilst the sanction of a strike-off is a harsh one, it is the sanction deployed frequently in cases of dishonesty of this nature, and the severity of the sanction cannot be mitigated, or even contextualised, in my view, by the respondent's relative inexperience or the fact that she was practising unsupported in a rural area. It is a cardinal and basic rule that solicitors must never touch clients' monies. Not only did the respondent repeatedly breach that rule, but she dishonestly sought to cover her tracks until she was caught by her own professional body who unravelled the falsitude of her actions."

Court of Appeal

The solicitor appealed to the Court of Appeal, arguing, among other things, that the president had fallen into error, first, in characterising her conduct as being dishonest and, second, in imposing a sanction that was disproportionate in the light of the mitigating factors that existed.

In their judgments, both Donnelly J and Collins J referenced the well-established rationale underpinning the strict approach taken by the courts when sanctioning solicitors who have been guilty of dishonesty. For his part, Collins J referred to the following passage from the 2001 decision of Keane CJ in *Re Burke*, a case involving an application for restoration to the Roll made by a solicitor who had previously been struck off: "A member of either branch of the legal profession enjoys rights and privileges in representing and advising members of the public denied to others. The public are, accordingly, entitled to repose a high degree of trust in both barristers and solicitors in the conduct of their respective professions. Unlike barristers, solicitors are regularly entrusted with the custody of monies belonging to their clients and, if public confidence in the solicitors' profession is to be maintained, any abuse of that trust inevitably must have serious consequences for the solicitor concerned. Viewed in that context, the range of cases in which a solicitor, who has been struck off because of dishonesty, can properly be restored to the register pursuant to subsection (4) is, of necessity, significantly limited."

Both judges quoted from the 2016 judgment of McKechnie J in *Carroll v Law Society* and, in particular, his statement to the effect that, because honesty was the "common strand" permeating all levels of the profession, "where proven dishonesty is involved, with or without the oft-associated features of misrepresentation, concealment and deceit, such misconduct will almost always feature at the highest level of the scale which I have referred to: therefore, in such

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circumstances, the sanction of dismissal will be a front-line consideration".

The solicitor's contention that her conduct in this particular case was not dishonest was given short shrift by the court. In support of her position, it had been suggested that she had not engaged in any *conscious dishonesty* and, rather, had acted foolishly and naively. The court made it clear, however, that dishonesty in the disciplinary context was to be assessed objectively; in other words, that the subjective belief of a given solicitor as to the appropriateness or otherwise of their conduct was immaterial.

As Donnelly J explained: "I am satisfied that there is also no basis for the argument that dishonesty in the context of disciplinary proceedings in this jurisdiction must be judged on a standard that leaves it to the individual solicitor's understanding of dishonesty. The rationale of the disciplinary code would be shaken if the amoral solicitor, who simply does not advert to the possibility of dishonesty, can escape severe sanction for their otherwise deliberate actions which are objectively dishonest."

Thus, a solicitor's actions in a given set of circumstances are to be subjected to a value judgement based upon the standards of right-thinking members of society, not his or her own subjective belief or understanding of what is right and wrong.

Once the solicitor's admitted misconduct was assessed on that basis, a finding of dishonesty was inevitable. After all, she had, on numerous occasions, knowingly used money belonging to one client to plug a hole in another client's account. What's more, she had later created false records to conceal what she had done.

Donnelly J summarised her finding on this issue in the following terms: "At issue here was systematic teeming and lading, wrongfully crediting money and misdescribing it in the client-account books, on occasion concealing shortfalls in clients' account books and, on one occasion, taking money from one client account and lodging it to the office account, and failing to record this receipt and payment in the client books of account, thereby concealing the misappropriation … This is a system of behaviour that is, by community standards, fundamentally dishonest. This standard would apply to any person who was entrusted to deal with monies belonging to another person. It is a standard of behaviour that is *a fortiori* fundamentally dishonest when applied to a solicitor for whom standards of probity, honesty and trustworthiness are basic human attributes necessary for a person to be a fit and proper person to practise as one."

The court was equally unimpressed by the argument that the sanction was disproportionate. While acknowledging that no client had suffered any actual loss as a result of the solicitor's actions, Donnelly J was satisfied that the president had been fully entitled to take the view that it was a cardinal and basic rule that solicitors must never touch clients' monies; that the fact that the shortfall was later made good did not mitigate against what Donnelly J described as the "extensive and deliberate manipulation of accounts and the mismanagement of client funds"; and that, accordingly, strike-off was the appropriate sanction to impose.

> *LAW SOCIETY V DOOCEY* HAS YET AGAIN HIGHLIGHTED THE SERIOUS CONSEQUENCES THAT AWAIT THOSE WHO BEHAVE IN A MANNER THAT BRINGS THE PROFESSION INTO DISREPUTE, WHILE ALSO OFFERING A HELPFUL CLARIFICATION AS TO THE NATURE OF THE TEST TO BE APPLIED IN DETERMINING WHETHER A PERSON HAS BEEN GUILTY OF DISHONESTY IN THE DISCIPLINARY CONTEXT

Regulatory framework

With the enactment of the *Legal Services Regulation Act 2015*, the regulatory framework within which the legal profession operates has changed dramatically. In the case of solicitors, a bifurcated system has been created for dealing with complaints, whereby the Law Society has retained its role in regulating compliance with the *Solicitors Accounts Regulations*, with the Legal Services Regulatory Authority assuming responsibility for all other classes of complaint.

Whichever process is applicable, the High Court retains a role when it comes to the imposition of the more severe types of sanction. The decision in *Doocey* offers a salutary reminder to the profession that those who are found to have behaved dishonestly should not expect leniency from the courts. g

Eoghan O'Sullivan BL is a practising barrister.

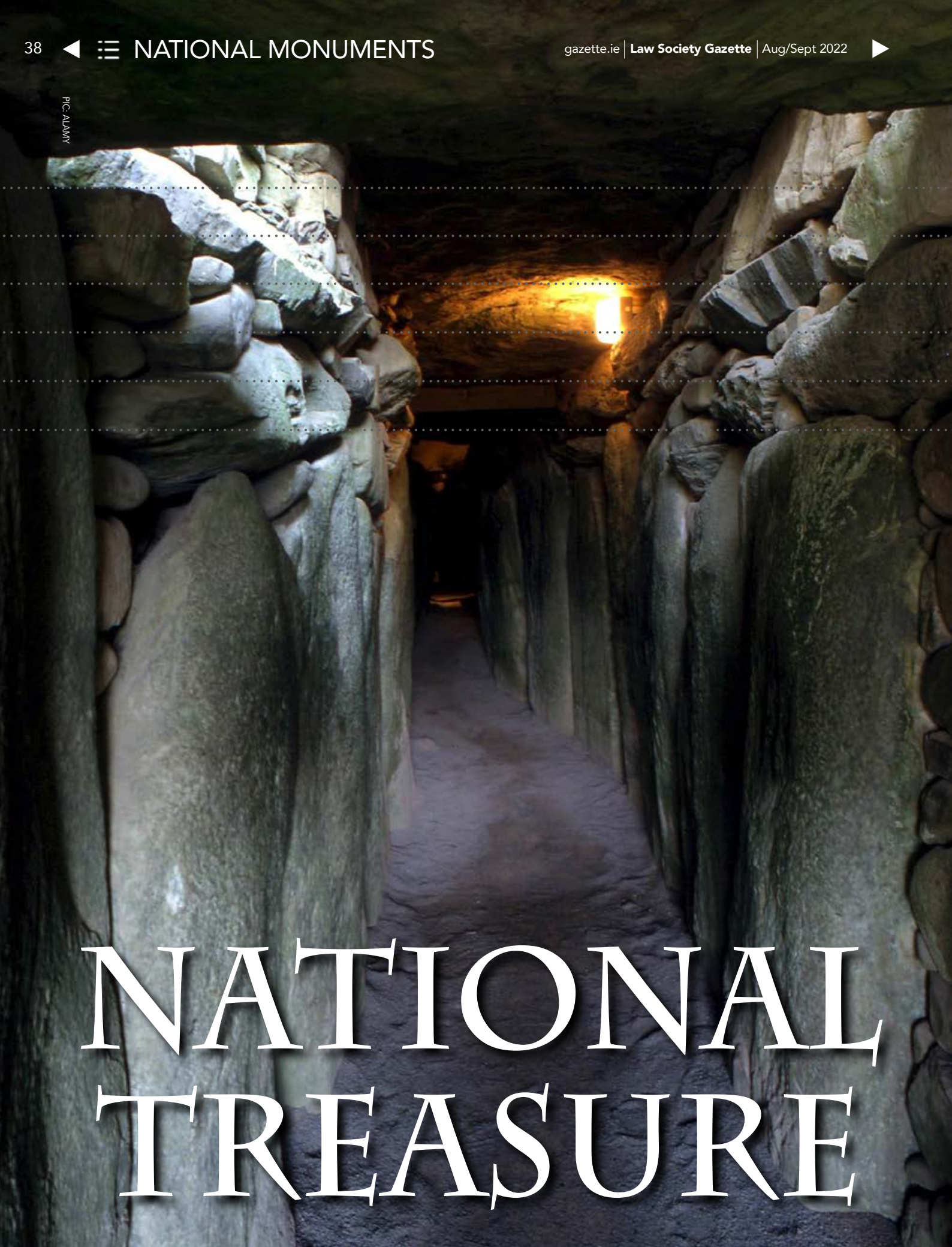
LOOK IT UP

CASES:

- *Carroll v Law Society* [2016] IESC 49; [2016] 1 IR 676
- *Law Society v Doocey* [2022] IECA 2
- *Re Burke* [2001] IESC 13; [2001] 4 IR 445

LEGISLATION:

- *Legal Services Regulation Act 2015*
- *Solicitors Accounts Regulations*



PIC: ALAMY

NATIONAL TREASURE

Various categories of structures are afforded special protection, with the most important being classified as 'national monuments'. But how does a structure get elevated to the stature of national monument? Alan Moyles gets digging

In most societies, the achievements of its ancestors are revered and the remnants of past civilisations are given protected status – consider the place of Newgrange in Irish culture, the Acropolis in Athens, or the Pyramids in Egypt. There are various categories of structures afforded special protection, but the most important are classified as national monuments.

National monuments are of such importance that criminal sanctions can be imposed for damaging one. The Supreme Court, in the 1984 case of *O'Callaghan v Commissioner of Public Works*, stated that it is a duty of citizens to protect national monuments. In addition, works to a national monument generally require ministerial approval.

Special status

Since a person who damages a national monument can be sentenced to a term of up to five years imprisonment – and the Office of Public Works (legally the Commissioners of Public Works in Ireland) among other rights has the authority to compulsorily acquire them – an important question is, how does a particular monument acquire the status of national monument?

Section 2 of the *National Monuments Act 1930* defines a 'national monument': "A monument or the remains of a monument, the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto, and also includes every monument in Saorstát Éireann to which the *Ancient Monuments Protection Act 1882* applied."

There are other potential routes to national monument status. The Office of Public Works (OPW) may issue a preservation order and may acquire a monument that is, in its opinion, a national monument; however, this requires a positive act by the OPW.

If it does not issue a preservation order or acquire a monument that is in its opinion a national monument, then in order to qualify as a national monument, a particular structure would need to satisfy the definition set out in section 2 of the 1930 act – that is, be "a monument, the preservation of which is a matter of national importance".

Ambiguous definition

The national monuments legislation does not set out a mechanism for deciding whether a particular monument is one whose preservation is a matter of national importance. For instance, a monument may be important, but is it of national importance? There is no set criteria for determining whether a monument is

worthy of preservation due to its national importance, nor is there an official or organisation that has the authority to make such a determination.

A great many monuments have their national-monument status confirmed by being covered by the 1882 act, by being the subject of preservation orders, or being acquired by the OPW – but, for example, how would a newly discovered monument be elevated to national-monument status in the absence of action by the OPW? What, to some, appears to be a monument of little or, at best, moderate significance could be to another a monument of major significance, worthy of the highest level of protection. This goes to the heart of the difficulty with the definition in section 2 of the 1930 act – a lack of set criteria as to how national monument status is determined.

This issue not only affects newly discovered monuments, but, potentially, monuments that are known of, but have not been recognised as national monuments or structures.

Judicial views

What role do the courts have in determining whether a particular monument deserves the moniker of national monument? The Court of Appeal considered this question in *Moore v Minister for Arts, Heritage and Gaeltacht* (2018). This case concerned properties on Moore Street in Dublin that had links to the 1916 Rising, and centred on whether the courts had the authority to declare a particular monument to be a 'national monument'.

The Court of Appeal held that the courts do not have the authority to make such declaration. The court stated that this was a political matter – for the executive or the legislature. It further stated that the legislation was unclear – section 2 of the 1930 act does not state how a monument becomes a national monument, in that it does not state that the minister or the OPW have the discretion or authority to declare a monument to be of national import.

> A GREAT MANY MONUMENTS HAVE THEIR NATIONAL-MONUMENT STATUS CONFIRMED BY BEING COVERED BY THE 1882 ACT, OR BEING THE SUBJECT OF PRESERVATION ORDERS, OR BEING ACQUIRED BY THE OPW – BUT, FOR EXAMPLE, HOW WOULD A NEWLY DISCOVERED MONUMENT BE ELEVATED TO NATIONAL-MONUMENT STATUS IN THE ABSENCE OF ACTION BY THE OPW?

The Court of Appeal did not offer an opinion as to the circumstances when a monument could be deemed a national monument, other than that the courts do not have the authority to give a declaration that a particular monument is a national monument.

The Supreme Court, in *Dunne & Lucas v Dun Laoghaire - Rathdown County Council* (2003), had found Carrickmines Castle to be a national monument on the basis of expert evidence, stating: "Plainly there is scope for differences of opinion as to whether the preservation of any particular monument is a matter of national importance. But it is essential to the resolution of the present case to note that the strongly expressed and closely argued conclusion of Dr Duffy, to the effect that it is a national monument, is uncontradicted by any expert evidence. It must therefore be accepted for the purposes of the present application. It is also difficult to close ones eyes to the fact that a committed expert is in a uniquely good position to form a view on this topic."

Not a national monument

PIC: JOE TREACY

The Court of Appeal, in the Moore Street case, held that the courts do not have the authority to give a declaration that a particular monument is a national monument; the Supreme Court in *Dunne* found a monument to be a national monument on the basis of expert evidence. The Supreme Court decision in the 2003 case was not mentioned in the 2018 *Moore* case.

'Classified' information

There is no definitive way to classify a particular monument as a national monument – no person or organisation appears to have that power, and the role of the courts is unclear. The OPW/minister do

have certain powers. For example, they can become guardians of a national monument or acquire one, and an argument can be made that their exercising of such power would bestow national-monument status. However, that requires the OPW/minister to make a positive act, and this decision could be open to challenge.

The courts must have a role in determining national-monument status, if only in reviewing the actions of the OPW or the minister to determine whether they are acting within their statutory functions. The use of public funds to compulsorily acquire something they believe to be a national monument has to be subject to judicial oversight.

Equally, if a newly discovered monument (of a type or class that would, generally, be considered a national monument) was in danger of suffering harm, and the OPW or the minister had not taken steps to protect or preserve such monument, would it be open to the courts to declare such a structure to be of national-monument status to aid its protection, particularly as it is an offence to damage a national monument, with the consequential impact for the monument, its owners, and the State?

Is it the case that, when faced with the immediate risk to a structure that is considered a national monument by the weight of expert opinion and public concern, the courts would refuse to hear such a matter on the grounds that classification of a national monument is a matter solely for the executive and legislature?

Possible solution

There will always be disagreement on the importance of any particular monument, and whether its level of importance is enough to justify its status as a national monument. It is open to the OPW to acquire or become guardians of a monument to afford it protection, but it may decide against this. Yet, it would seem to be unsatisfactory that there is such ambiguity about the designation of what qualifies as a national monument.

A system based on the antiquity of a structure has merits. For example, anything shown to be in existence prior to the year 1700 could automatically be given national monument status; however, post-1700 structures would still be subject to the vagaries of personal opinion. The buildings associated with the 1916 Rising derived their claims to national-monument status based on events that occurred little over 100 years ago. The advantage of a date-based system would be that anything that is the appropriate age would automatically benefit from enhanced protection.

It would appear to be obvious that a person or body should have the authority to declare that something is a national monument, based on set criteria. Such decisions should be subject to judicial oversight, but if the Court of Appeal is correct in its decision in the Moore Street case, currently there is no authority with such power.

The national-monuments legislation is clear on how a national monument should be treated, even allowing for its destruction if considered necessary, provided that the correct procedures are followed. What is also required is a much clearer and more definite process for determining the national-monument status of a structure.

Although new discoveries are made, the stock of national monuments in the country is under challenge from infrastructural developments – or simply neglect. We owe it to future generations, at the very least, to ensure that there is a proper system in place to allow for the classification of national monuments that should help to assist with their protection.

PIC: SHUTTERSTOCK

A national monument but not a 'National Monument'

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LOOK IT UP

CASES:

- *Dunne & Lucas v Dun Laoghaire-Rathdown County Council* [2003] IESC 15
- *Moore v Minister for Arts, Heritage and the Gaeltacht* [2018] IECA 28
- *O'Callaghan v Commissioner of Public Works* [1984] WJSC-SC 2607; [1985] ILRM 364

LEGISLATION:

- *Ancient Monuments Protection Act 1882*
- *National Monuments Act 1930*

COVID-19 LED TO SIGNIFICANT GROWTH IN THE FIELD OF TELEMEDICINE. ÁINE MCCARTHY DISCUSSES THE REGULATORY CHALLENGES OF NAVIGATING THE LEGAL INTRICACIES OF TELEMEDICINE AND REMOTE MEDICAL SERVICES AROUND THE WORLD

Dr WHO?

PIC: ALAMY

elemedicine offers many advantages over the traditional healthcare visit but, until recently, it was largely underutilised. On 11 March 2020, COVID-19 was declared a pandemic by the World Health Organisation, dramatically altering the way medicine is globally practised. As quarantining and social distancing became the norm, the presence of patients in hospital emergency departments quickly became unsustainable, suddenly thrusting telemedicine into centre stage.

The EU Commission's 2012 staff working document on the applicability of the existing EU legal framework to telemedicine services defines 'telemedicine' as the provision of healthcare services through the use of information or communication technology, in situations where the health professional and the patient are not in the same location.

One of the most relevant benefits of telemedicine during the (ongoing) pandemic is the increased safety of both patients and providers. By using virtual platforms, social-distancing measures can be easily enforced to reduce potentially infectious exposures.

Doctors without borders

There is a growing trend worldwide in the use of transnational telemedicine, whereby more doctors are seeking to serve patients across borders. The availability of cross-border telemedicine is

PIC: SHUTTERSTOCK/GAZETTE STUDIO

particularly relevant for expatriates, permitting them to use a programme that connects them with virtual healthcare services in their home country if they experience a health-related issue during their stay abroad. Cross-border telemedicine potentially makes quality expert care from specialists around the world available to patients who would not otherwise have access to such specialists for serious medical conditions. This is particularly important for high-risk populations that have difficulty accessing it due to distance or disability.

While it is widely accepted that the practice of medicine needs to be regulated globally, the practice of *tele*medicine often does not fit within the traditional areas of regulation applicable to the medical profession. Crucially, even though some countries have begun to regulate the practice of telemedicine, such laws do not necessarily contemplate a scenario in which a foreign doctor, based outside the country where the patient is based, may provide remote services into that country.

As global regulation struggles to keep pace with developments in remote medical care, the regulations have become a blurry collection of laws from country to country, making it difficult to navigate the regulatory environment that applies to cross-border telemedicine.

Telemedicine regulations

The definition of 'telemedicine' varies tremendously in scope and breadth from country to country. Wikipedia sees it as a synonym for 'telehealth', which is described as the distribution of health-related services and information via electronic information and telecommunication technologies. In some countries, a much more limited term is used to describe telemedicine, and such services must involve steps such as diagnosis and monitoring.

In some countries, there is no definition and no specific legislation regarding telemedicine, and healthcare laws neither expressly regulate the activity nor contemplate a prohibition on the activity. However, this does not mean that telemedicine activities can proceed in such countries. In such cases, the regulatory framework for rendering traditional healthcare services may nevertheless apply in ways that limit a foreign doctor's services into the country, or that cause the doctor to be directly subject to the supervision of local medical regulatory boards.

For example, there is no legal permission for telemedicine in Austria, as the 'iron principle of direct treatment' (face-to-face) applies. The immediacy of the treatment is the core of the

medical profession in Austria. Mere virtual treatment is, therefore, not permitted in Austria, with the exception of emergencies.

Occasionally, certain countries publish legislation or guidance solely to address telemedicine, but these laws often focus on in-country health professionals providing remote care to local patients.

Guidance in Ireland

Even though there is no specific legislation in Ireland, guidance issued by the Medical Council (the regulator of medical doctors in Ireland) may be relevant in this context. Current Medical Council guidelines set out basic rules on the provision of telemedicine services. The key point is that telemedicine services can be provided in Ireland. The guidelines state that the provision of telemedicine services requires that a number of specific safeguards are in place, such as strong security measures and clear information policies, which would be challenging for every foreign doctor to adhere to.

In France, there are strict rules around telemedicine. Before the pandemic, to be eligible for coverage under the *Assurance Maladie*, the tele-consultation must be part of the 'care pathway', meaning that the user must have met the advising doctor once in the previous 12 months before the tele-consultation.

In Italy, while tele-advice is permitted, a doctor (not a nurse) should perform "any complex and specialised act of prevention, diagnosis, cure and therapy" – which implies that telemedicine involves an additional step of diagnosis and not mere tele-advice. The lack of clear and consistent definitions and rules represent a major challenge to providers designing a global remote-care model.

'Telemedicine' versus 'tele-advice'

Members of the public are increasingly using the internet to research their health concerns. More than a third of adults in the US regularly use the internet to self-diagnose their ailments. Private companies have, in recent years, launched their own symptom-checkers that, using computerised algorithms, ask users a series of questions about their symptoms or require users to input details about their symptoms themselves.

Symptom-checkers serve two main functions: to facilitate self-diagnosis; and to assist with triage. Following the use of the symptom-checker, the company will proceed

to use the results of the checker with a triage function that informs patients whether they should seek care at all and, if so, where and with what urgency. In some cases, this will be followed by tele-advice services that do not involve diagnosis or prescription-type services, which would, typically be provided by locally licensed doctors.

Due to the lack of a clear definition of telemedicine in most countries, there is a risk in certain countries that providers could engage in the unlicensed practice of 'medicine' – for example, by relaying a symptom-checker finding that is construed as the diagnosis of a user's condition. In addition, such software in use in the market is often categorised as a 'medical device' and must comply with medical-device regulation in various countries. However, the medical-device rules are not always clear when it comes to regulating new software that is distributed globally to users based in different countries under different global service and other contractual frameworks.

The practice of 'medicine'

One of the most challenging aspects of cross-border telemedicine is how doctor-licensing rules apply when the doctor and patient are located in different countries. Globally, the residence of a patient typically dictates the applicable licensing and registration regime for direct doctor/patient encounters, and various local laws and guidance regulate whether a foreign doctor would be 'practising medicine' if rendering a medical diagnosis to a foreign patient.

For example, healthcare providers of telemedicine services to patients within Ireland must be registered with the Medical Council. The Medical Council guidance has no statutory effect, but derogations from the guidelines may constitute a breach of professional duty by the medical doctors. Similarly, in Italy, while the practice of telemedicine is permitted, if the patient has his/her habitual residence in Italy and the doctor is located abroad, but directs its activities to Italy, Italian law applies. As a result of Italian law being applicable, any doctor engaged in the provision of such services must be admitted to practice in Italy.

Such rules again represent a situation that does not contemplate doctors who are not physically present in the country in which care is delivered, and this can be a major challenge to effectively render cross-border telemedicine in some countries.

North-American perspectives

US states require healthcare practitioners to be licensed prior to engaging in the practice of medicine, which most states define as the diagnosing or treating of a condition, and individuals engaged in such diagnosing or treating must be licensed by the applicable state's professional regulatory body. If a person engages in activities that a state considers the practice of 'medicine' without first obtaining such licensure, the person may be subject to adverse regulatory action for engaging in the unlicensed practice of the profession.

> DUE TO THE LACK OF A CLEAR DEFINITION OF TELEMEDICINE IN MOST COUNTRIES, THERE IS A RISK IN CERTAIN COUNTRIES THAT PROVIDERS COULD ENGAGE IN THE UNLICENSED PRACTICE OF 'MEDICINE'

IT SEEMS THAT ANY STANDARDISATION OF INTERNATIONAL TELEMEDICINE LAW OR PRACTICE STANDARDS IS STILL A LONG WAY OFF

In Canada, the regulation of healthcare is the responsibility of each of the ten provinces and three territories and, accordingly, the definition of the practice of medicine and the registration process for doctors differ between provinces and territories across Canada. One Canadian province takes the view that a doctor based outside the province need not have a licence or registration with the province, so long as the physician provides telemedicine services to patients in the province no more than five times per year. Exceeding the five-time limit triggers registration requirements and the local medical regulator's disciplinary process and standards of practice.

Chinese medicine

In China, providing remote diagnosis normally constitutes the practice of medicine, and would be limited to locally licensed clinicians. Where a specific medical technique is regulated or considered a 'controlled act', the activity is often restricted to appropriately licensed professionals. However, as is typical under Chinese law, the term 'controlled act' is not defined, and it is a matter of interpretation on a case-by-case basis, further increasing the risk of any doctor looking to provide cross-border telemedicine into that country.

Despite the existence of local rules to non-local doctors, it is often impractical for regulators to enforce disciplinary actions upon doctors located abroad. Nevertheless, doctors must be wary of consequences in their home country of violating another country's rules and regulations, such as suspension of professional licences and negative press.

Data-privacy concerns

Given the current heavily regulated global landscape in the area of data privacy, a careful assessment of data-protection law is necessary in any form of cross-border telemedicine that involves collecting, processing, using, transferring, or storing patient personal data.

Several sources of privacy requirements may apply to such services, and the patient's written consent is not necessarily sufficient to justify a cross-border transfer of personal-health data. Some countries require health data to be processed and stored only inside the country of the patient receiving services, and such data may not be transferred outside of the country unless the relevant health authority issues special approval. For example, in the United Arab Emirates, federal law sets out that health information in the UAE may not be stored, processed, generated, or transferred outside the UAE, unless a decision is issued by the health authority in coordination with the ministry.

China imposes a regulatory regime in respect of network operators, including the imposition of data collection, processing, and localisation requirements. This means that 'important data' relating to medical treatment in China must be stored in China. Offshore transfer of personal data is only permissible if the entity in question passes a complex security assessment, formulated by the Cyberspace Administration of China.

It is clear that, by virtue of a healthcare provider holding such health data, this triggers compliance with administrative, technical, and physical safeguards that follow the data, including individual rights of access, correction of records, and retention requirements.

In a European context, *General Data Protection Regulation* principles will apply, and restrict the transfer of personal data to countries outside the European Economic Area, unless specified conditions are met. Again, a frustrating paradoxical analysis often follows to determine whether and how, in practice, such laws operate to regulate foreign doctors who remotely provide advice or care to local patients. As the area of data protection becomes more heavily regulated globally, the practice of telemedicine will only become more complicated.

More than two years into the global pandemic, it is clear that cross-border telemedicine will continue to be more important than ever – but it seems that any standardisation of international telemedicine law or practice standards is still a long way off. g

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LOOK IT UP

LEGISLATION:

- *Cybersecurity Law of the People's Republic of China*
- *Federal Law No 2 of 2019 on the Use of the Information and Communication Technology* (United Arab Emirates)

LITERATURE:

- EU Commission (2012), *Commission Staff Working Document on the Applicability of the Existing EU Legal Framework to Telemedicine Services*
- Medical Council (2019), *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (amended 8th edition)
- Medical Council (2020), *Telemedicine Phone and Video Consultations: A Guide for Doctors*

A land imagined

The *Singapore Convention* has elevated international mediated settlement agreements to a status that can be recognised and enforced within the framework of private international law. Ronán Feehily goes in search of certainty

AN APOLOGY MUST NOT BE TAKEN INTO ACCOUNT IN DETERMINING FAULT OR LIABILITY OR ANY ISSUE IN CONNECTION WITH THE MATTER TO THE PREJUDICE OF THE PERSON, UNLESS IN EXCEPTIONAL CIRCUMSTANCES IT WOULD BE JUST AND EQUITABLE TO DO SO

Mediation has gathered momentum as a means of international commercial dispute resolution over the past four decades. Regional instruments (such as the *European Mediation Directive*), international instruments (such as the *UNCITRAL Model Law on International Commercial Mediation*), and international settlement agreements resulting from mediation have provided frameworks to facilitate greater use of the process.

The advent of the *Singapore Convention* has broken new ground by elevating international mediated settlement agreements to a new status that can be recognised and enforced within the framework of private international law. This new international framework for enforcement will serve to raise the international profile of the commercial mediation process, giving it increased credibility and visibility, and the promise of greater regulatory robustness.

Several elements can help in limiting difficulties arising during the mediation process and the consequent likelihood that parties would want to rescind mediated settlement agreements. These include effective training and accreditation of mediators, the observance of mediation standards, and the presence at mediation of legal advisors educated about the mediation process.

The mediator and legal advisors to the parties can take practical steps to avoid subsequent enforcement difficulties. While each commercial dispute is unique and may demand specific requirements for its own form of settlement agreement, the following steps have been gleaned from jurisprudence across various jurisdictions, covering many types of disputes.

Writing and signature

Ensuring that the agreement is in writing and signed by the parties or authorised signatories may seem an obvious step, but many mediations end with an oral agreement and a commitment by one of the parties to prepare the necessary documents. This can give rise to enforcement difficulties if a completed and signed written settlement does not materialise.

The settlement agreement should be signed by the parties or authorised representatives and provide that it is admissible in evidence in any proceedings to enforce its terms. The parties should consider incorporating a provision that mediation confidentiality is waived if any issue arises regarding enforcement of the settlement.

It is a good practice to keep a record of what has been agreed during the course of the mediation, and then verify this again when completing the settlement agreement. When preparing for the mediation, some mediators ask the parties to provide a sample settlement agreement that can be modified in the course of the mediation as issues are agreed. This enhances the goal of ensuring that no one leaves the mediation until the settlement terms are reduced to writing and signed by the parties.

Material terms

The settlement should incorporate all of the material terms, use language that is certain enough to be understood and to require performance, and confirm, where it is agreed, that the parties intend the agreement to be binding and enforceable. Careful language should be used for follow-up documents that implement the settlement terms.

For example, the agreement should not be made 'subject to' follow-up documents or 'effective only upon' the execution of further documents, unless it is agreed and required. It is important that, if the document is stated to be a 'full and final settlement', it resolves all outstanding issues and that the dispute settled is clearly defined in the agreement. If a party wants to preserve their right to sue on other causes of action, they should expressly reserve that right in the settlement agreement.

Clear and certain language is also important where a party may need to seek relief to


PIC: ALAMY

enforce a mediated settlement in a foreign court where English is not the first language of the judiciary. If the parties are using different languages and the mediated settlement agreement is required in more than one language, a certified translation should be provided for the parties to sign, to avoid inconsistency in meaning.

Material representations

If settlement is predicated on material representations, these should be incorporated into the settlement agreement, and the agreement should unequivocally state that they reflect all the representations on which the parties relied. This should make it unnecessary to breach the confidentiality of the mediation process to obtain such evidence if the settlement agreement is challenged.

Material ancillary documents, such as an apology or release, should also be agreed to, and the detail finalised during the mediation process to prevent later disputes over such documents.

Experience from the USA suggests that, when an apology occurs in a mediation that is perceived as sincere, it can have a major impact. Some jurisdictions explicitly encourage the use of apologies during mediation. For example, Hong Kong enacted the *Apology Ordinance* in 2017 to encourage mediated settlements. It covers all apologies made at any stage between parties in dispute and provides that an apology does not constitute an admission of fault or liability.

An apology must not be taken into account in determining fault or liability or any issue in connection with the matter to the prejudice of the person, unless in exceptional circumstances it would be just and equitable to do so.

Competence and judgement

As many commercial disputes involve sophisticated parties and legal representation, confirming the parties' competence and

THE AGREEMENT SHOULD NOT BE MADE 'SUBJECT TO' FOLLOW-UP DOCUMENTS OR 'EFFECTIVE ONLY UPON' THE EXECUTION OF FURTHER DOCUMENTS, UNLESS IT IS AGREED AND REQUIRED

independent judgement may seem excessive or superfluous.

However, for the avoidance of doubt, it may prove helpful to provide in the settlement agreement that the parties agree to the terms and understand them, including:

- They understand that the terms are binding and can be judicially enforced,
- They agree that all material representations made to them during the mediation were incorporated into the settlement agreement,
- They understand that neither the mediator nor the opposing party or the opposing party's advisors were under any positive obligation to furnish them with information,
- They were not suffering from any physical impairment that adversely affected their ability to exercise their judgement in approving the settlement,
- There were opportunities to consult their lawyers regarding the settlement terms,
- They acted voluntarily and exercised independent judgement throughout the process, including the decision to settle, and
- They have authority to legally bind the party that they represented in the mediation.

Litigation considerations

The settlement should clearly state whether the agreement or fulfilment of the agreement settles the dispute that is the subject of litigation. In most cases it will be the former, such that rights will be based on the settlement agreement, not on underlying causes of action. It should also clearly state the dispute that is being settled.

Where proceedings have issued, this can be done by reference to the 'disputes the subject-matter of the proceedings' between the parties. This can be widened to include claims and causes of action, present or future, that relate in some way to the dispute in the proceedings. It can also be widened to include any other disputes between the parties that they wish to resolve.

Claims and counter-claims in the relevant proceedings will have to be withdrawn, and costs must be reflected in the settlement. Some jurisdictions do not automatically assume that costs are included. Settlement agreements will often provide that the claims are withdrawn, with the parties covering their own costs.

Where monetary compensation is involved, the agreement must reflect how much is being paid, and by whom, to settle the claims. An interest provision may be appropriate for late payments.

Confidentiality, and the basis upon which it can be waived, should be reflected in the agreement. The governing law and jurisdiction of the agreement should also be included. Other terms may need to reflect an ongoing business relationship, where intellectual or other rights must be considered, or where goods or securities must be delivered or returned.

Converting the agreement

If the dispute is being litigated, the terms of the settlement could be incorporated into the final judgment, or the settlement could provide for the court to retain jurisdiction over the matter for enforcement purposes.

If the matter is not being litigated, it may be possible to request that the mediator act as an arbitrator to effectively make an arbitral award reflecting the mediated settlement agreement, providing the possible recognition of such an award under the *New York Convention*.

However, not all jurisdictions permit a mediator to step into the role of arbitrator. Some jurisdictions expressly provide for such a procedure, while, in a number of jurisdictions, the settlement agreement may also be deemed to have the same force and effect as an arbitral award.

From the perspective of a commercial relationship and amicable dispute resolution, a mediated settlement can be viewed as the ideal outcome of any arbitration. Indeed, the use of mediation during arbitral proceedings is steadily increasing.

Alternative option

The *Singapore Convention* offers an alternative enforcement option to converting the settlement into an arbitral award or court judgment. From a policy perspective, parties who elect to mediate their disputes should not have to use an additional form of alternative dispute resolution solely to receive the same legal enforcement status as an arbitral award.

It may also be indelicate, for business relations, for one party to raise the issue of enhanced enforcement protection with another party that they hope to reach an amicable settlement with. In mediation, the parties have given up contractual rights in settling, and agreed to both the process and the outcome. This justifies the settlement having a more privileged status than a 'mere' contract. Indeed, it seems ironic that mediated settlements have had a lower legal enforcement status than awards from arbitration – where parties agreed to the process, but not the outcome.

Time will tell whether the *Singapore Convention* becomes to mediated settlement agreements what the *New York Convention* is to arbitral awards. The fact that the *Singapore Convention* began with 46 signatories augurs well for its future. The *New York Convention*, which has been in force for over 60 years, has over 160 contracting states and continues to attract new signatories, but it began with just ten signatories.

Putting mediation on an equal footing with arbitration will help to reshape perceptions of the commercial mediation process and support a cultural shift. Business also will likely be more willing to invest time and resources in the process where there is an international framework for enforcement.

However, experience with international commercial arbitration suggests that it will take some time for the cultural shift that will make the process a primary player in the international dispute-resolution arena. It is to be hoped that courts, when requested to apply the convention, will adopt a robust interpretative approach similar to that generally applied in the arbitral context. g

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LOOK IT UP

LEGISLATION:

- *Apology Ordinance (cap 631)* (Hong Kong, 2017)
- *European Mediation Directive* (2008/52/EC)
- *New York Arbitration Convention* (1958)
- *Singapore Convention on Mediation*
- *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018*

Was it right to save the SMDF?

The SMDF, not without controversy, was rescued by the profession in 2011. What has happened since – and was it a good idea to save it? Patrick Dorgan does the underwriting

> THE WORLD AND NATIONAL CRISIS CONTINUED – THIS WAS THE TIME WHEN THOUSANDS OF BANKS, AND THE WORLD'S LARGEST INSURER – FAILED. IN THIS FOREST OF CRASHING OAKS, IT WAS UNLIKELY THAT THE FUND WOULD ESCAPE UNSCATHED

The Solicitors' Mutual Defence Fund was founded in 1987, in response to difficult market conditions for solicitors' professional indemnity insurance (PII) at the time. It was a familiar story – high premiums and little competition between insurers. *Plus ça change!*

The fund had a fixed contribution from members, whether big firm or small – no matter what the practice profile or claims experience was. In fact, there were (relative to today) very few claims against solicitors. Those who did have the misfortune to have a claim were dealt with by one of the 'panel solicitors' – a sympathetic and avuncular group of colleagues who acted as claims managers as well as defence solicitors.

The fund acquired a large membership, and there is no doubt that it attained its central objective of maintaining premiums at a significantly lower level than might otherwise have been the case, over a long period of years. By 2007, it insured over 50% of the profession by number, and its reserves were in excess of €23 million, which represented no less than four times the claims exposure in that particular year. It was in an enviably strong financial position and, in addition, had implemented a policy of reinsuring a large proportion of its potential liabilities with top-rated insurers and syndicates.

Double whammy

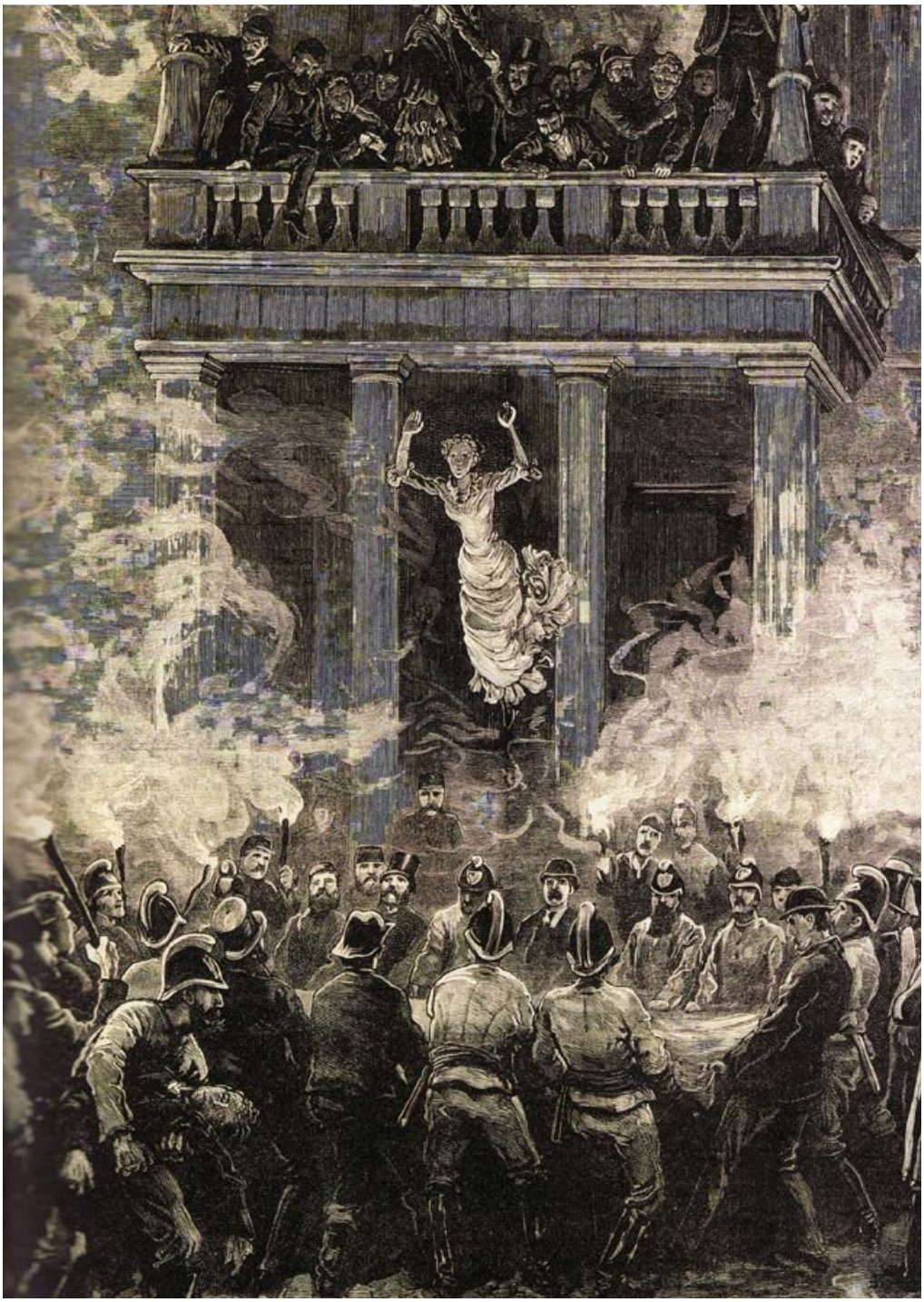
However, in 2008, as a direct consequence of the collapse in the Irish economy, unprecedented numbers of claims started to be made against solicitors. Up to 2008, claims numbers averaged around 200 per annum. In 2008, a total of 501 claims were notified and, in 2009, a staggering 1,109 claims came in – nearly five times the average. As a double whammy, the fund suffered the loss of virtually all its reserves, which had (on advice) been invested in liquid securities like, well, Irish banks. The Law Society agreed to guarantee its liabilities up to €5 million (the purpose being to stabilise the PII market), but this facility was never called on or used.

The world and national crisis continued – this was the time when thousands of banks, and the world's largest insurer – failed. In this forest of crashing oaks, it was unlikely that the sapling that was the fund would escape unscathed. Further financial support was sought from the Society and, after furious debate within and outside the Council, it was agreed that the stability of the PII market and the financial and, indeed, personal wellbeing (to say the least) of approximately 3,000 affected colleagues required that support to be given. Following an EGM of the profession and a postal ballot, the Society agreed to a support package for the fund of €16 million, funded by an annual subvention of €200 per solicitor, to continue for ten years.

Vigorous programme

At that time, the estimate of the gross liabilities of the fund was €220 million, arising from approximately 1,200 live claims against colleagues. A new board, overseen by and reporting to the Society, embarked on a vigorous programme of claim disposal and cost reduction and, over a four-year period, gross liabilities were reduced to a figure of approximately €80 million from 300 claims before reinsurance, and administration costs had been halved.

In view of this improvement, the board took the opportunity to implement an exit strategy, and agreement was reached with Randall and Quilter Investment Holdings Ltd (RQI), an insurance run-off specialist firm, to take over the fund and its remaining



PIC: WIKIMEDIA COMMONS

liabilities. The deal with RQI involved the Society agreeing to contribute capital to the fund over a five-year period. The fund was of the view that its liabilities were reported as being worse than they actually were (the Society had, prudently, insisted on the most pessimistic, worst-case type view being taken of claims at the time of the rescue), and part of the deal was that the Society would share in any improvement.

The precise terms are commercially sensitive, but the actual outcomes were more positive than the projections, and the annual subvention of €200 per member ceased in 2019 – three years ahead of schedule.

Final bill?

So, what was the final bill? The profession had committed €16 million. This figure was premised on recovery of

> THE FINAL CASH COST OF THE RESCUE OF THE FUND TO THE PROFESSION, FACTORING IN ALL COSTS AND EXPENSES OVER THE PERIOD, IS €11.1 MILLION – NEARLY €5 MILLION LESS THAN PREDICTED. THAT IS UNEQUIVOCALLY A GOOD RESULT. BUT, YOU WILL SAY, WE STILL HAD TO PAY OUT €11 MILLION. WHAT DID WE GET FOR THE MONEY? THE ANSWER IS – AN AWFUL LOT

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For more information visit: www.lawsociety.ie/legalmind

Access the service directly and talk to a counsellor now on freephone:

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€4 million due to the fund by Bloxham Stockbrokers. This firm also failed, so that the Society's potential exposure rose to €20 million. Taking into account some recoveries from Bloxham, the improvement in the liabilities and certain other adjustments, the Society recently had the benefit of a €2.45 million repayment/release of reserves on the conclusion of its deal with RQI (who remain the owners of the fund and its outstanding liabilities). The final cash cost of the rescue of the fund to the profession, factoring in all costs and expenses over the period, is €11.1 million – nearly €5 million less than predicted.

That is unequivocally a good result. But, you will say, we still had to pay out €11 million. What did we get for the money? The answer is – an awful lot.

Market competition

The first thing we got was competition in the market. Even if you (or your large or small firm) never had a claim, or were never a member of the fund, that made your PII a lot cheaper, not just way back in 1987, but all the way through to 2011.

The second thing this money bought was stability. If the fund had collapsed, there would have been catastrophic consequences, not just in the PII market, but likely in the whole regulatory space. It is not easy to imagine what might have been imposed on the profession by Government in the event of such a collapse.

The next one is harder to quantify, but is important. If the fund had collapsed, hundreds, if not thousands, of colleagues would likely have faced personal bankruptcy. The cost of just defending a PII claim is likely beyond the resources of most of us, let alone the cost of meeting a successful claim. The outcomes would have been financially, professionally and personally overwhelming. As a Council member observed recently in the debate on this topic, what is the price of even one suicide?

PIC: WIKIMEDIA COMMONS

Nine-figure sum

Finally, we have referred to the reinsurance that the fund had. Insurers look at profitability as a proposition of the premium. As a typical example, a general insurer might take a premium of €100, pay out €60, apportion €15 for their costs and the balance is profit. The 'loss ratio' is the ratio of loss to premium – in our example, probably 65%. Anything over 100% is a loss. In the worst claims years, the fund's reinsurers were reporting 400-500% loss ratios – in plain terms, they were paying out four to five times the amount they got in from the profession as premiums. The overall cost to the market (that is, saving to the profession) over the lifetime of the fund, and particularly since 2009, is commercially sensitive, but is not very far from a nine-figure sum.

Never say never. I'm sometimes asked if a mutual would work again if market conditions deteriorated. I don't know. All that can be said is that the fund was an unequivocal success for the profession, when viewed, not in the narrow prism of the events of 2011, but in the context of its existence from 1987 and into the future.

It is a shining example of what the profession can do – for itself and the public it serves – when it pulls together. Don't forget, it is still in operation and paying claims against colleagues, efficiently and sympathetically, in accordance with its original ethos – 'by solicitors, for solicitors'. g

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Patrick Dorgan is a partner in RDJ LLP and a past-president of the Law Society. He was tasked by the Council to oversee the run-off of the Solicitors' Mutual Defence Fund and its eventual disposal.

Guardians of the Galaxy

The Law Society's new 'fused' PPC, launching this September, gives students the chance to take modules in human-rights law and disability law – leading to the possibility of a career path as a 'guardian of the common good'. Mary Hallissey reports

> THERE IS A COMMON MISCONCEPTION THAT IT'S NOT VIABLE TO PURSUE A SUCCESSFUL CAREER IN HUMAN-RIGHTS LAW IN IRELAND. THIS HAS NOT BEEN BORNE OUT BY THE EXPERIENCE OF HUMAN-RIGHTS LAWYERS IN IRELAND

A career in human-rights law is an exciting prospect for any future lawyer, given its ever-changing and all-encompassing nature. Whether you're interested in company law, environmental law, employment law or even personal-injury law, human rights can be integrated into many different sectors.

Human rights are essential for ensuring access to vital services, as well as meaningful public participation for everyone. A focus on human rights also maintains checks and balances on those in power.

There is increasing demand for practitioners who specialise in different areas of human rights and disability law – in the not-for-profit sector and in public and private-sector bodies. A number of firms have established dedicated *pro bono* departments providing legal support on human-rights and environmental issues. For example, A&L Goodbody has partnered with multiple Irish charities, including the Irish Refugee Council, Focus Ireland and Mercy Law Resource Centre, Spirasi, and the Public Interest Law Alliance to provide thousands of hours in *pro bono* support. The firm has recently introduced a new trainee rotation in its *pro bono* practice, to allow trainees to work closely with charities and not-for-profit organisations, and to help develop vital skills in client care, legal research, drafting and advocacy.

In recognising the high demand for these skills, the Law Society's new 'fused' PPC (from 6 September) will provide students with the opportunity to take elective modules in human rights law and disability law. The modules will provide students with essential knowledge in both areas, and will set the groundwork for those interested in pursuing a career in either field.

Human-rights law encompasses a vast array of different sectors, yet there is a common perception that it is entirely linked, and only invoked through, fundamental rights outlined in the *European Convention on Human Rights* or international human-rights treaties. This tends to lead to the common misconception that it's not viable to pursue a successful career in human-rights law in Ireland. This has not been borne out by the experience of human-rights lawyers in Ireland: many have enjoyed successful careers working in private law firms, charitable organisations, as in-house counsel or within the public sector.

Raising awareness

The Society's Human Rights and Equality Committee was established in November 2004 to raise awareness among the public and legal profession of access-to-justice and human-rights issues in Ireland. The committee comprises solicitors working in many practice areas, ranging from company law, environmental law, minority rights, criminal law, healthcare, housing and planning, immigration, family, and disability law.

The committee is extremely active and regularly makes submissions to Government on important issues, including the review of the *Equality Acts*, the National Action Plan Against Racism for Ireland, and the General Scheme of the *Policing, Security and Community Safety Bill*.

Members have appeared before different Oireachtas committees to provide evidence on a range of different topics related to their areas of expertise, such as legal aid for victims of sexual violence under the General Scheme of the *Criminal Justice (Victims of Crime) (Amendment) Bill 2018* and concerns regarding the *White Paper on Direct Provision*.

Importance today

Human-rights violations are constantly occurring throughout the State – both by private individuals and State bodies – whether in relation to housing and homelessness, gender and sexual-based violence, discrimination in employment,

PIC: ALAMY

MEET THE LAWYERS!

Members of the Human Rights and Equality Committee enjoy successful careers in human-rights law. We meet three of them:

Susan Fay

Since qualifying as a solicitor, Susan has been actively involved in advocating for disability rights and the rights of Travellers in Ireland. She is responsible for the establishment and operation of the Legal Aid Board's Mincéir/Traveller Legal Support Service, which has been fully operational since early 2022.

In addition to her work with the Legal Aid Board, Susan volunteers on a number of advisory groups, committees, and networks, working on issues of disability and Traveller rights. She is currently chair of the Disability Rights Lawyers Network.

Stephen Kirwan

Having qualified as a solicitor in 2017, Stephen was recently appointed a partner at KOD Lyons Solicitors. He heads up their immigration and public-interest law team. He has been involved in landmark strategic human-rights challenges against various State departments – primarily concerning immigration and asylum law, national security law, disability and education law, equality law, capacity law, social-welfare law, and challenges to State commission of investigations, and decisions concerning survivors of industrial and State-sponsored abuse. These cases have been, or are currently before, the Irish superior courts, the CJEU, and the European Court of Human Rights.

Gary Lee

Gary was principal solicitor and CEO of a national disability organisation prior to becoming managing solicitor of Ballymun Community Law Centre, where some 70% of his clients are disabled people. He has acted for people with disabilities and others in all courts and various quasi-judicial forums in social-welfare appeals, discrimination cases, healthcare matters, employment, housing, and many other areas. Gary has expertise in mental-health law and capacity law, and has chaired Mental Health Tribunals since 2006. He is a member of the Council of the Law Society and is chair of the Law Society's Human Rights and Equality Committee. He is a former chair of the Disability Federation of Ireland, has given evidence to Oireachtas committees, and is a former member of the Government Taskforce on Personalised Budgets for People with Disabilities and of the National Disability Strategy Implementation Group.

He says that it is hugely rewarding to be able to use the law to vindicate the rights of people to ensure that they have access to basic needs. He would encourage trainee solicitors to consider a career in human-rights law, adding that the new PPC modules in disability law and human-rights law represent a fantastic opportunity for trainee solicitors.

denial of rights for persons with disabilities, and the continuation of direct provision.

Although justice through the legal system is not a silver bullet to remedy all social issues, it is certainly a starting point to help solidify protections and amplify the voices of those who may otherwise be unheard. A robust and equitable justice system sends out a stark warning that those responsible for the denial of fundamental human rights of others will be held responsible. Human-rights lawyers play an important and exciting role in highlighting such issues, and may be seen as the guardians of the common good.

The Human Rights and Equality Committee encourages law students and trainees to consider a career in human rights, and reminds them of lawyers' duties to uphold the rule of law and protect access to justice for all persons.

You can find out more about the Human Rights and Equality Committee in the 'Representation' section of the Law Society's website. g

Mary Hallissey is a journalist with the Law Society Gazette.

> ALTHOUGH JUSTICE THROUGH THE LEGAL SYSTEM IS NOT A SILVER BULLET TO REMEDY ALL SOCIAL ISSUES, IT IS CERTAINLY A STARTING POINT TO HELP SOLIDIFY PROTECTIONS, AND AMPLIFY THE VOICES OF THOSE WHO MAY OTHERWISE BE UNHEARD

I am the greatest!

The Law Society's expanded Psychological Services aims to help lawyers reach their full potential – helping them go from 'good' to the greatest version of themselves

> WE SEE PSYCHOLOGICAL DEVELOPMENT, IN ALL ITS FORMS, AS ENABLING PROFESSIONALS TO GO FROM GOOD TO GREAT. NO ONE NEEDS TO WAIT UNTIL THEY ARE EXPERIENCING BURN-OUT, OR UNTIL THERE IS A CRISIS TO ENGAGE WITH US OR, INDEED, WITH LEGALMIND

The Law Society has expanded the Law School's Psychological Services into Law Society of Ireland Psychological Services, which now provides innovative supports to solicitors across the legal life cycle.

One of the key supports offered is 'time concentrated therapy', a bespoke form of short-term psychotherapy for trainees attending the Law School. Members can now access their own equivalent through LegalMind, a fully independent subsidised service offered through Spectrum Life, in partnership with Spectrum Mental Health.

As with the Law School model, LegalMind is open to any solicitor holding a practising certificate who would like to try some form of professional reflection. It offers expert assistance to enhance solicitors' energy and enthusiasm for practice, relationships with clients and colleagues, personal wellbeing, and professional success. Members can choose from counselling, coaching, financial advice, psychology and psychotherapy.

Starting point

Psychotherapist Antoinette Moriarty is head of Psychological Services. "We see psychological development, in all its forms, as enabling professionals to go from good to great," she observes. "No one needs to wait until they are experiencing burn-out or until there is a crisis to engage with us or, indeed, with LegalMind.

"Curiosity is the best starting point – come with your own questions. Therapy is an excellent space in which to ask yourself: 'Am I happy with who I am becoming? What really lights me up? What are my goals and purpose for the year ahead?'"

Moriarty believes that we can use therapy in particular to figure out more about "what makes us tick, what's really going on in our personal and professional relationships, and how we can make the most of this stage of life".

The complete lawyer

The Law Society is the first Irish professional body to fully integrate psychological development and support into its training. This aspect of personal and interpersonal growth is now the 'third pillar' of Irish legal training, alongside the traditional twin pillars of legal knowledge and legal skills.

Trainees have enthusiastically engaged in 'Shrink Me: Psychology of a Lawyer' over the past eight years. A new expanded module, 'The Complete Lawyer', will begin this September as part of the new fused Professional Practice Course. It will build on 'Shrink Me' and, as the name suggests, go further again.

Trainees will learn about their own psychology, the unconscious dynamics at play in law firms, and how to practice optimally – without compromising personal goals or wellness.

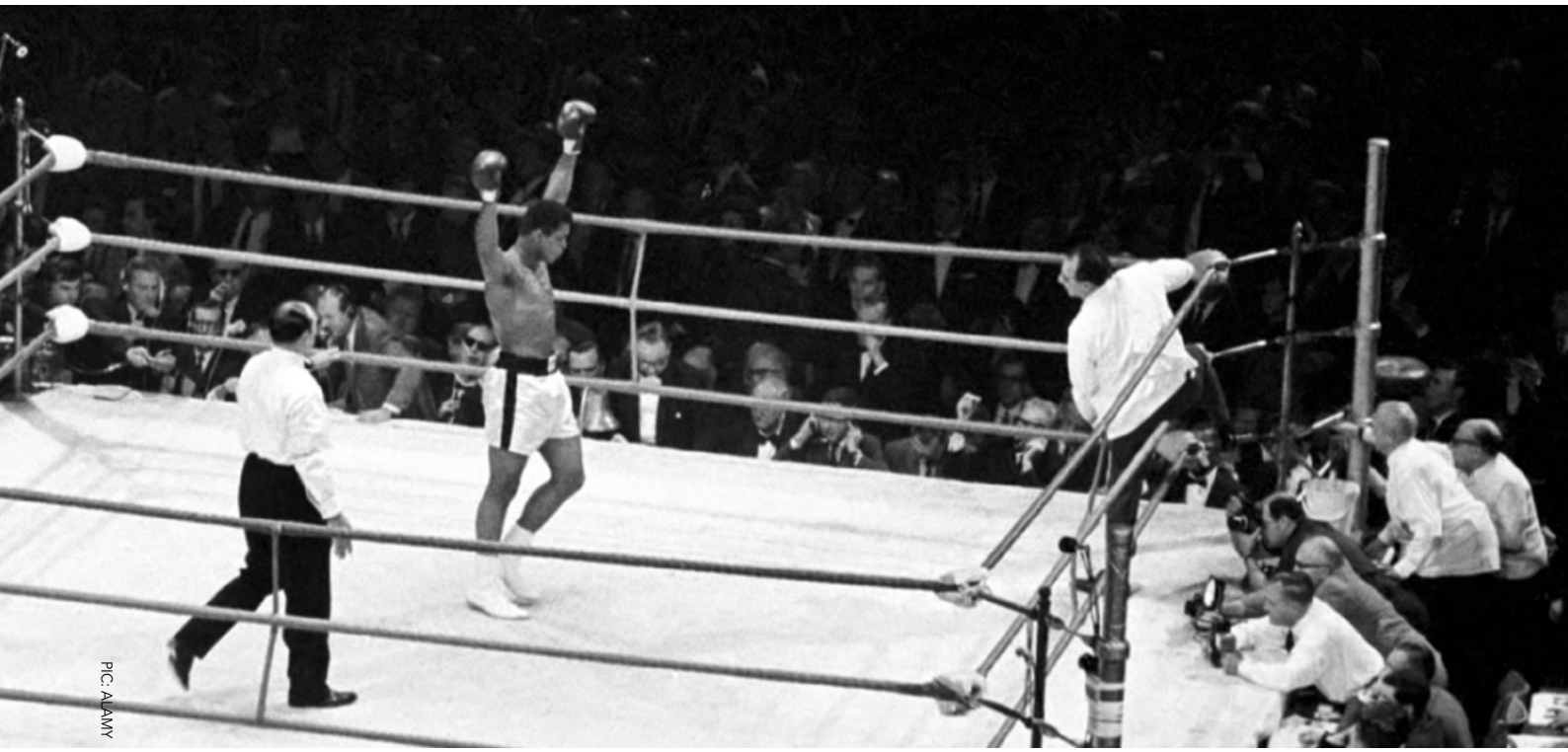
If you are already qualified, fear not! The new Psychological Service has exciting plans to offer new programmes for lawyers at all stages of the lifecycle. As Antoinette confirms: "We know solicitors are working harder than ever as the pandemic recedes and client demands grow. We are putting together a suite of new programmes with a host of international and local voices to energise and support members, to strengthen their ability to engage with complex and fast-paced environments, and to manage their own boundaries with demanding clients."

A safe space

Moriarty emphasises that you do not need to be in crisis to attend counselling. Counselling can offer tools and resources that contribute to emotional growth, improved interpersonal skills, increased self-awareness, and reflexivity.

By learning to strengthen your communication skills, navigate your relationships, and improve your limiting beliefs, you are gaining vital leadership skills that will add to your competitive advantage. Counselling offers a space to learn how to set healthy boundaries, prioritise them and, in return, become more productive.

"Allowing time to reflect inwards allows us to strengthen our sense of purpose and drive," Moriarty says.



PIC: ALAMY

Mary Duffy (professional wellbeing executive at the Law Society) is passionate about resilience as a core attribute of high-functioning professionals: "Resilience is an ability to adapt to adverse or challenging situations."

Resilience is important because it stops us from giving up when things get hard. It's the ability to recognise an obstacle, and not letting it get in the way of achieving your goal.

Experts in Spectrum Mental Health explain that it can be helpful to differentiate between your specific goals, and the overall direction you want in your life and the deeper values that this reflects. By examining the values that are driving your goals, you can identify their true meaning and determine the best way to pursue those goals. Ask yourself: what does this goal really mean to me? What would my life look like if I got there? What would I do if I was already there? How would I spend my time and energy?

Being aware of your deeper drives will enable you to identify more direct ways to access what you need – investing time and effort into your close relationships, or into building on more distant relationships to strengthen them.

Supporting you

The Psychological Services team is determined to offer relevant and meaningful supports that will help solicitors in the reality of their daily professional lives. Keep an eye on the developing plans on the Psychological Services page at www.lawsociety.ie and email your thoughts, suggestions, and observations to Antoinette, Mary and the team at ps@lawsociety.ie.

Members can receive in-the-moment support with a mental-health professional, day or night, by contacting LegalMind at freephone 1800 81 41 77. Text or WhatsApp 'Hi' to 087 369 0010 (or +353 87 369 0010 from outside Ireland) for a text-back, register for the online portal, or download the Spectrum Life app for mobile access to LegalMind, live chat, and digital-health content. (The app 'organisational code' is well2020.) g

LOOK IT UP

- LegalMind (at www.lawsociety.ie)
- 'Reach your optimal potential', a LegalMind video, at www.youtube.com/watch?v=3_6HcZgzjT0
- Law Society Psychological Services website at www.lawsociety.ie
- Spectrum Mental Health (visit https://mentalhealth.ie and search for 'How to be resilient in tough times' and 'Goals vs direction')

> THE NEW PSYCHOLOGICAL SERVICE HAS EXCITING PLANS TO OFFER NEW PROGRAMMES FOR LAWYERS AT ALL STAGES OF THE LIFECYCLE

Canon law

Canon Inc v Commission contains some important lessons for parties and their advisors contemplating creative approaches to the structuring of mergers and acquisitions. Cormac Little takes a snapshot

> THE 2002 ACT, IN RESPONSE TO A CCPC RECOMMENDED REVISION, EXPLICITLY STATES THAT THIS 'WAREHOUSING EXEMPTION' IS NOT AVAILABLE WHERE THE ULTIMATE BUYER BEARS A MAJOR PART OF THE ECONOMIC RISK OF THE INITIAL ACQUISITION

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

In May, the EU's General Court rejected Japan-based manufacturer of photocopiers/digital cameras Canon Inc's appeal against an aggregate fine of €28 million by the European Commission. This penalty was imposed in June 2019 because the commission found that Canon had both failed to notify it regarding the proposed acquisition of Toshiba Medical Systems Corporation (TMSC) in advance of implementation and, also, partially implemented this transaction prior to EU merger clearance.

The court's reasoning in *Canon Inc v Commission* contains some important lessons for parties (and their advisors) contemplating creative approaches to the structuring of mergers and acquisitions.

'Gun-jumping'

EU and Irish merger-control rules apply in the State. The former regime is contained in the *EU Merger Regulation* (EUMR), whereas the latter regime is found in the *Competition Act 2002* (as amended). Both regimes apply to changes in control, provided the relevant jurisdictional thresholds are met.

The EUMR tends to apply to transactions involving large companies with a potential impact across several EU member states, whereas the 2002 act typically catches deals whose likely effects are national rather than international. Under both the EUMR and the 2002 act, 'control' is defined as the capability of exercising decisive influence over the strategic business affairs of the relevant target entity or business. Control may be either *de jure* (for example, by contract) or *de facto* (for example, through voting patterns at shareholder meetings).

The EUMR operates an *ex ante* suspensory regime. In other words, if a particular transaction triggers a mandatory notification to the commission, article 4(1) of the EUMR provides that it must be notified prior to completion. Article 4(1) is also known as the 'obligation to notify' provision. Separately, article 7(1) of the EUMR stipulates that any transaction that is mandatorily notifiable to the commission must not be implemented until it is cleared (or deemed) cleared. Article 7(1) is often referred to as the 'standstill obligation'. Although perhaps more accurately referring to an infringement of the latter provision, a breach of either or both provisions is usually referred to as 'gun-jumping'.

The 2002 act, like many other national merger-control laws, also requires the mandatory notification of certain transactions, while also prohibiting the closing of a notifiable transaction until the clearance or deemed clearance is granted.

Hello, Tosh

In early 2016, Toshiba Corporation was in significant financial difficulty. It thus initiated an accelerated bidding process for the sale of TMSC. Canon won this award process because it was the only bidder that had not made the payment of the purchase price conditional on the receipt of any relevant merger-control clearances, including under the EUMR. The acquisition of TMSC by Canon was carried out in two steps – a 'warehousing' sale to an immediate buyer, followed by the final acquisition by the ultimate purchaser after any required merger-control clearances were granted. The purpose of this approach was to allow the sale of TMSC to be recognised in Toshiba's accounts by 31 March 2016, even though the sale was not completed – that is, Canon would not actually acquire control until after it received the necessary merger approvals.

Firstly, in March 2016, MS Holding, a special purpose vehicle (SPV) solely controlled by Canon, acquired 95% of TMSC's shares. At the same time, Canon acquired the remaining 5% of TMSC's shares from Toshiba, while also purchasing a call option on the TMSC equity held by the SPV. This first step was the 'interim transaction' and was implemented that month. Secondly, in December 2016,

PIC: ALAMY

after obtaining merger clearance from both the commission (and the other relevant merger-control authorities), Canon exercised its option to acquire the remaining shares in TMSC. This step is referred to as the 'ultimate transaction'.

Around the same time as the interim transaction occurred, Canon began pre-notification engagement with the commission, and a formal notification was submitted under the EUMR in August 2016. The acquisition received unconditional clearance from the commission the following month.

However, in parallel with its substantive review of the transaction, the commission was also examining whether Canon had breached either the failure to notify and/or the standstill obligations under the EUMR. This investigation was triggered by an anonymous complaint submitted in March 2016. (One might speculate that this complainant was one of the disappointed under-bidders for TMSC.)

Arising from its investigation, the commission found that:

- The interim transaction and the ultimate transaction constituted a single concentration within the meaning of the EUMR,
- The interim transaction was a direct functional link to the acquisition of control of TMSC by Canon and, as such, contributed to the change in control of TMSC, and
- Because it partially implemented the acquisition prior to both notification to, and clearance from the commission, Canon violated both the standstill obligation and the obligation to notify.

Therefore, the commission concluded that by proceeding with the interim transaction, Canon had violated both article 4(1) and article 7(1) of the EUMR. A fine of €14 million was imposed on the company for each infringement.

Canon's appeal

In its appeal to the General Court, Canon claimed that the interim transaction did not infringe either article 4(1) or article 7(1) of the EUMR. This company's core argument was that the interim transaction could not constitute early implementation, as it did not result in an acquisition of control over TMSC.

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Canon sought to rely on the EU's Court of Justice's May 2018 decision in Case C-633/16 *Ernst & Young*, where the court held that only transactions contributing to a lasting change of control of the target undertaking fall within the scope of article 7(1).

In addition, that court found that actions/operations do not contribute to a lasting change of control when they do not have a direct functional link with the implementation of the transaction. Indeed, the court ultimately determined that the transaction in question, namely the termination of a cooperation agreement, that was a prerequisite to the merger, did not constitute partial implementation of the concentration, given that it had no direct functional link with the relevant change of control.

The commission accepted that Canon did not acquire control of TMSC as a result of the interim transaction, so the issue to be determined was whether this first step could constitute partial implementation. The General Court noted that a transaction is implemented as soon as the parties to the transaction carry out operations that contribute to a lasting change in control of the target undertaking. Therefore, partial implementation does fall within the scope of the standstill obligation, and the test for determining whether Canon breached its obligations under the EUMR is not whether there was an acquisition of control of TMSC prior to the clearance of the transaction, but whether the contested actions contributed, in whole or in part, in fact or in law, to the change of control of the undertaking before it was notified and/or before it was cleared. The court concluded that the mere fact that the voting share options gave Canon the possibility to exercise influence on the target's business infringed the standstill and notification obligations (albeit that influence was insufficient to confer control upon Canon).

Ultimately, the court upheld the commission's conclusion that the interim transaction and the ultimate transaction together constituted a single transaction for three reasons:

- The interim transaction was only carried out in view of the ultimate transaction,
- The sole purpose of MS Holding was to facilitate the acquisition of control of TMSC by Canon, and
- Canon was the only party able to determine the identity of the ultimate purchaser of TMSC and, therefore, assumed the economic risk of the entire transaction.

Competition Act

As mentioned above, under section 18(1) of the 2002 act, parties are obliged to notify any merger or acquisition satisfying the relevant jurisdictional thresholds to the Competition and Consumer Protection Commission (CCPC). If the merging parties implement a notifiable merger/acquisition prior to clearance or deemed clearance from CCPC, the merger or acquisition is deemed void. In addition, failure to notify the CCPC constitutes a criminal offence under Irish law that can result in fines up to €250,000.

In December 2015, Armalou Holdings Limited (Armalou) acquired Lillis-O'Donnell Motor Company Limited through its wholly owned subsidiary, Spirit Ford Limited. After the CCPC was informed about the acquisition by a third party in August 2017, it commenced an investigation into the suspected breach of section 18(1) of the 2002 act the following October.

Ultimately, the CCPC referred the matter to the Director of Public Prosecutions, who brought proceedings. In April 2019, Armalou pleaded guilty to six charges in connection with the failure to notify the CCPC of the transaction. The Dublin District Court found that Armalou was not aware of its duty to notify the CCPC and, since the failure to notify therefore did not constitute a wilful breach of the 2002 act, the court applied the *Probation Act 1907* and ordered Armalou to make a charitable donation of €2,000. (Separately, the acquisition was notified to the CCPC in February 2018 – over two years after being implemented, and only after the CCPC had required the merging parties to notify the transaction.)

Implications

Together, *Canon* and *Armalou* show that both the commission and the CCPC will adopt a strict approach to structuring transactions that may give rise to 'gun-jumping'. In competitive bid situations, a purchaser whose offer will require mergers clearance is often at a disadvantage where a rival bidder does not have any such obligations, particularly in situations where the vendor would favour a quick sale. In such scenarios, the purchaser's advisors are often asked to suggest potential ways of accelerating the payment of consideration to the vendor.

Warehousing is often cited as a potential option. In theory, this could mean that the ultimate purchaser could instruct its investment bank to buy the target for the purpose of selling same to the former subject to any merger clearances. Potentially, the first/initial transaction does not require approval because, under both the EUMR and the 2002 act, where control is acquired by a financial or other institution (whose normal activity includes dealing with securities, for the purposes of selling such securities with one year), a notifiable transaction will not occur. However, the 2002 act, in response to a CCPC recommended revision, explicitly states that this 'warehousing exemption' is not available where the ultimate buyer bears a major part of the economic risk of the initial acquisition. Indeed, the General Court's decision in *Canon* is further proof of the perils of such structures. Accordingly, the warehousing approach is likely to be oft-mentioned, but little used.

More broadly, the *Canon* judgment shows that parties need to craft any transaction documentation carefully, so that there is no ground for the commission, the CCPC, or a disgruntled third party to argue that steps contributing to a lasting change of control were taken in advance of any necessary merger clearance. g

Cormac Little SC is partner and head of the Competition and Regulation Unit of William Fry LLP and is the chair of the Law Society's EU and International Affairs Committee.

LOOK IT UP

CASES:

- Case T-609/19 *Canon Inc v Commission*
- Case C-633/16 *Ernst & Young*

LEGISLATION:

- *Competition Act 2002*
- *EU Merger Regulation* (Council Regulation (EC) No 139/2004)

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17 Nov	Connaught Solicitors' Symposium 2022	Breaffy House Hotel, Castlebar, Co Mayo
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6 Oct	**Younger Members Annual Seminar** Law Society of Ireland, Dublin	1.5 Management & Professional Development Skills (Group Study)	Complimentary	
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09_22

CONVEYANCING COMMITTEE

REVENUE AND RECEIVER OF FINES SHERIFF

● The Conveyancing Committee has been informed that an interim sheriff for Leitrim, Longford, Monaghan and Cavan was appointed on 27 May 2022, and revenue sheriff searches can resume as before. The interim sheriff is David Kelly of Callan Tansey, Crescent House, Boyle, Co Roscommon.

Practitioners may, therefore, note that the committee's practice note on this topic, published in the July 2022 *Gazette*, has been superseded. g

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 Thomas K Madden, a solicitor practising as Thomas K Madden and Company, Solicitors, 1 Camlin View, Longford, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT14]**
Law Society of Ireland (applicant)
Thomas Madden (respondent solicitor)

On 23 May 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that he:

1) Drew costs (fees and other amounts due to the solicitor) from the client account by means of client account cheques payable to the clients, some of which were endorsed on the back by the solicitor and the clients,
2) Made misleading entries in the books of accounts regarding payment to clients, which payments were actually made to the solicitor,
3) Caused or allowed a personal injury claim client to endorse the back of a blank client account cheque,
4) Failed to comply with the current anti-money-laundering client identification requirement in the sample of files examined,
5) Breached one of the conditions of his 2015 practising certificate by issuing a number of client cheques that had not been countersigned as required,
6) Failed to lodge to the office account and to record the receipt in the office account books of the practice certain costs drawn from the client account by means of client account cheques payable to the client,
7) Conducted a number of transactions involving cash received from the client account in 2013 and/or 2014 off the books.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €5,000 to the compensation fund,
3) Pay a sum of €5,651 as a contribution towards the whole of the costs of the applicant.

● **In the matter of Patrick McGonagle, a solicitor previously practising as McGonagle Solicitors, 1 Main Street, Dundrum, Dublin 14, and in the matter of the *Solicitors Acts 1954-2015* [2020/DT03 and High Court record 2022 no 53 SA]**
Law Society of Ireland (applicant)
Patrick McGonagle (respondent solicitor)

On 7 December 2021, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that he:

1) Failed to keep any or adequate books of account together with relevant supporting documents, as required by regulation 13 of the *Solicitors Accounts Regulations 2014*,
2) Failed to record transactions relating to clients in the office account, in an office cash book, or client ledgers, in breach of regulation 13(7) of the *Solicitors Accounts Regulations*,
3) Allowed a deficit in client funds of €74,164.80 as of 30 June 2019, reduced to €42,417.77 as of 31 October 2019,
4) Allowed unauthorised transfers between unrelated client ledger accounts, in breach of regulation 10 of the *Solicitors Accounts Regulations*,
5) Allowed debit balances of €18,613.24 to occur on the client account as of 31 October 2019, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
6) Allowed an unexplained difference of €34,821 in the client control account in the closing figures as at 30 June 2019 and the opening balances as at 1 July 2019,
7) Withdrew costs from the client account that were not lodged to the office account, in breach of regulation 9(2) of the *Solicitors Accounts Regulations*,
8) Took monies for fees when not properly due, in breach of regulation 7(1)(a)(iii) of the *Solicitors Accounts Regulations*,
9) Paid office overheads from the client account, in breach of regulation 7(2)(b) of the *Solicitors Accounts Regulations*,
10) Failed to complete balancing statements every six months within two months of the balancing date, in breach of regulation 13(8) of the *Solicitors Accounts Regulations*,
11) Failed to complete balancing statements for office transactions on a yearly basis within two months of the balancing date, in breach of regulation 13(9) of the *Solicitors Accounts Regulations*,
12) Failed to maintain nominal office accounts, in breach of regulation 13(7)(d) of the *Solicitors Accounts Regulations*,
13) Failed to record as a debit, on the office side of relevant ledger accounts, the amount of the professional fees in any bill of costs furnished to a client, in breach of regulation 11(4) of the *Solicitors Accounts Regulations*.

The disciplinary tribunal ordered that the Law Society bring the findings and report before the High Court. On 20 June 2022, the High Court ordered that:

1) The name of the respondent solicitor be struck off the Roll of Solicitors,
2) The respondent solicitor pay a sum of €1,500 towards the compensation fund,
3) The respondent solicitor pay a contribution of €3,112 towards the whole of the costs of the Law Society in the disciplinary proceedings,
4) The respondent solicitor pay measured costs of €1,774 in respect of the High Court proceedings. g

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Please return to *Law Society Gazette*, Blackhall Place, Dublin 7.

WILLS

Allen, Clare (deceased), late of 117 Landen Road, Ballyfermot, Dublin 10, who died on 8 February 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact John Gaynor & Co, Solicitors LLP, 42-46 Thomas Street, Dublin D08 AW86; DX 1078 Four Courts; tel: 01 454 0068, web: www.jgs.ie, email: law@jgs.ie

Atkinson, Joseph (deceased), late of 36 Ranelagh Road, Ealing, London, and also Church House, Bangor Erris, Ballina, Co Mayo. Would any person having knowledge of any will executed by the above-named deceased, who died on 13 February 2022, please contact RDJ Solicitors, Aengus House, Dock Street, Galway; tel: 091 594 777, email: grainne.finn@rdj.ie

Blount, Patrick (deceased), late of 65 Feale Drive, Listowel, Co Kerry, and formerly of Gaulstown, Drumree, Co Meath, who died on 22 January 2022. Would any person having knowledge of any will made by the above-named deceased please contact Pierse Fitzgibbon Solicitors LLP, Market Street, Listowel, Co Kerry, quoting reference HJ/G339/4; tel: 068 50970, email: property@pierse.ie

Brennan, Marie (deceased) and Brennan, Paul ('Patrick') (deceased), both late of 102 Clontarf Road, Co Dublin, who died on 24 August 2020 and 22 February 2021 respectively. Would any person having knowledge of the whereabouts of any wills made by the above-named deceased, or if any firm is holding same or was in recent contact with the above-named deceased regarding their wills before their deaths, please contact Mullany Walsh Maxwells Solicitors, 19 Herbert Place, Dublin 2; tel: 01 676 5473, email: mail@mwmlegal.ie

Casey, Matthew (deceased), late of Ohill, Drumlish, Co Longford, who died on 8 December 2003. Would any person having knowledge of any will executed by the above-named deceased, and in particular a will dated 17 May 1993 and a codicil dated 29 November 1995, please contact Connellan Solicitors LLP, 3 Church Street, Longford, Co Longford; tel: 043 334 6440, email: info@connellansolicitors.ie

Cooke, Rose (Rosanna) (deceased), late of 112 Millbrook Avenue, Dublin 13, who died on 27 June 2020. Would any person having knowledge of the whereabouts of any will made by the above-named, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact Leo Buckley and Co, Solicitors, 78 Merrion Square, Dublin 2; tel: 01 678 5933, email: leo@leobuckleysolicitors.com

Cosgrave, Breda Anne (deceased), late of 4 Camberley Oaks, Churchtown, Dublin 14, and formerly of the following addresses: Apt 16, Block 2, Grenville Place, Clanbrassil Street, Dublin 2; Orwell Park Road, Templeogue, Dublin 6; 48 Hughes Road East, Walkinstown, Dublin; Charleville Apts, Charleville Place, Dublin; and Morehampton Road, Donnybrook, Dublin, who died on 14 October 2019. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Melvyn Hanley Solicitors, 16 Patrick Street, Limerick, tel: 061 400 533, email: reception@melvynhanley.com

Curley, Declan (deceased), late of Clonark, Athlone, Co Roscommon, who died in New Zealand on 12 February 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Mellotte O'Carroll Solicitors, tel: 090 649 2692, email: info@mocsolicitors.ie

Curran, Barbara (deceased), who died on 14 May 2022, residing in Bosnia at time of death and formerly of Clouds Hill, Windgates, Greystones, Co Wicklow. Would any person holding or having knowledge of a will made by the above-named deceased please contact Denis McSweeney Solicitors, 40 Upper Grand Canal Street, Dublin 4; tel: 01 676 6033

Dennehy, Damhnait (deceased), late of 29 Orchardstown Park, Rathfarnham, Dublin 14, who died on 21 April 2022. Would any person holding or having knowledge of a will made by the above-named deceased please contact Harry Mooney & Co, Solicitors, 7 Orchardstown Park, Rathfarnham, Dublin 14; tel: 01 441 5031; email: info@harrymooney.ie

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 October *Gazette*: 21 September 2022.**

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*.

Dillon, John (deceased), late of 73 Leopardstown Avenue, Foxrock, Dublin 18, who died on 30 May 2022. 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 Barry O'Beirne, Cullen & O'Beirne Solicitors, Suite 9, Mill Road, Greystones, Co Wicklow; tel: 01 888 0855, email: info@cullenobeirne.ie

Doherty, Frank (deceased), late of 30A Landscape Avenue, Churchtown, Dublin 14, who died on 16 February 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Helen O'Riain & Co, Solicitors, 25 Baggot Street Lower, Dublin 2, tel: 087 687 9266, email: info@helenoriainsolicitors.ie

Feldman, Estelle (deceased), late of 26 The Dale, Kingswood Heights, Tallaght, Dublin 24. who died on 10 July 2022. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact John Glynn & Company, Solicitors, Law Chambers, The Village Square, Tallaght, Dublin 24; tel: 01 451 5099, email: john@solicitor.net

Flynn, Catherine (otherwise Kathleen Flynn) (deceased), late of 73 Pearse Street, Dublin 2, and 32 Farney Park, Sandymount, Dublin 4, who died on 23 November 1989. Would any person having knowledge of a will made by the above-named deceased please contact Donal O'Kelly & Co, Solicitors, 1 Grand Canal Wharf, South Dock Road, Dublin 4; tel: 01 665 8540, fax: 01 669 9000, email info@donalokellyandco.ie

Gibbons, Padraic (deceased), late of 13 Annamoe Drive, Cabra, Dublin 7, and Meelickmore, Claremorris, Co Mayo, who died on 23 March 2022. 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 7652, email: info@jenningssolicitors.ie

Gibney, Nancy (Anne) (deceased), late of Blackbull House, Piercetown, Dunboyne, Co Meath, who died on 13 May 2022. Would any person have the knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact Thomas F Griffin & Co, Solicitors, Parnell Street, Thurles, Co Tipperary; tel: 0504 21451, email: info@tfgriffinsolicitors.ie

Gist, Eric Edwin (deceased), late of 51 Pynes Lane, Bideford, Devon, EX39 3ED. Would any person having knowledge of any will made by the above-named deceased, who died on 13 November 2020, please contact Co-op Legal Services, 5738810p, 650 Aztec West, Almondsbury, Bristol, BS32 4SD; tel 00 44 330 606 9423 (ext 2321), email: eva.warrin@coop.co.uk

Jones, Samuel (deceased), late of Ballyreask, Donard, Co Wicklow, who died on 6 May 2022. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Callan Tansey Solicitors LLP, Crescent House, The Crescent, Boyle, Co Roscommon; tel. 071 966 2019, email: info@callantansey.ie

Halion, Anne (deceased), late of 16 Riverwood Copse, Castleknock, Dublin 15, and formerly of High Street, Tuam, Co Galway, who died on 27 May 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eric Gleeson of Eric Gleeson & Co, Solicitors, Shop Street, Tuam, Co Galway; DX 116013 Tuam; tel: 093 52396, email: eric@ericgleeson.ie

Harpur, William (deceased), late of 2196 Highfield Estate, Newbridge, Co Kildare, Ireland, and TLC Nursing Home, Citywest, Fortunestown Lane, Cooldown Commons, Dublin 24. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 15 November 2021, please contact John L Mulvey & Co, Solicitors, Main Street, Tallaght, Dublin 24; tel: 01 451 5055, email: info@jlms.ie

Howard, Josephine (deceased), late of 'Silver Wings', Sillogue, Monasterboice, Co Louth, and originally from Addergown, Ballyduff, Tralee, Co Kerry, who died on 8 April 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Patrick Branigan and Co, Solicitors, Unit 11b Fitzwilliam Court, Dyer Street, Drogheda, Co Louth; DX 23020

Irwin, Paul (deceased), late of 28 Willie Bermingham Place, Dublin 8, who died on 27 July 2020. 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 Bohan Solicitors, Suite A19,

Bracetown Business Park, Dublin 15, D15 YDC1; tel: 01 677 9616, email: bohans@securemail.ie

Kelly, John Thomas (deceased), late of Ballinacarrig, Tara Hill, Gorey, Co Wexford, who died on 23 November 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Shanley Solicitors LLP, 3 Canon Row, Navan, Co Meath; tel: 046 909 3200, email: info@shanleysolicitors.com

Lyons, Annie (deceased), late of 40 Cardiffsbridge Road, Finglas, Dublin 11, who died on 16 August 2004. Would any solicitor or person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Thorpe & Taaffe Solicitors, 1 Main Street, Finglas, Dublin 11; DX 8005; tel: 01 834 4959, email: david@thorpetaaffe.ie

Murphy, Thomas (orse Tommie) (deceased), late of 6 Rossenena Court, Windgap, Co Kilkenny. Would any person having knowledge of any will executed by the above-named deceased, who died on 18 April 2022, please contact Michael A O'Brien & Co, Solicitors, Lee House, Strand Lane, Carrick-on-Suir, Co Tipperary; tel: 051 641 244, email: office@maobriensolicitors.ie

O'Brien, Timothy (deceased), late of Ballinvoultig, Waterfall, Cork, Co Cork, who died on 14 March 2022. Would any person having knowledge of any will made by the above-named deceased please contact Wolfe & Co LLP Solicitors, Market Street, Skibbereen, Co. Cork; tel: 028 21177, email: info@wolfe.ie

O'Connor, Eustace, Bartholomew (o/w Rossa) (deceased), late of 6 Lavay Heights, Charlestown, Co Mayo, who died on 9 July 2022. Would any person having knowledge of any will executed by the above-named deceased please contact Paul Smyth, Solicitor, Smyth & Son Solicitors, Rope Walk, Drogheda, Co Louth; tel: 041 983 8616, email: psmyth@smythandson.ie

O'Shea, Helen Mairead (deceased), late of Apartment 35, Block D, Radcliffe Apartments, Binn Eadair View, Dublin Road, Sutton, Dublin 13, who died on 15 July 2022. Would any person holding or having the knowledge of a will made by the above-named deceased please contact Michael J Kennedy and Company, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: reception@mjksolicitors.com

Quirke, Amy (deceased), late of 17 Westway View, Blanchardstown, Dublin 15. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, who died on 28 December 2019, please contact Patricia Drumgoole, Drumgoole Solicitors, 102 Upper Drumcondra Road, Dublin 9; tel: 01 837 4464, fax: 01 837 4652, email: info@drumgooles.ie

Reynolds, Mary (deceased), late of Ryevale Nursing Home, Leixlip, Co Kildare, formerly of Grove House, Ardclough, Celbridge, Co Kildare, who died on 19 April 2020. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 179 Crumlin Road, Dublin 12; email: info@johnstonsolicitors.ie

Reynolds, Thecla (deceased), late of Ryevale Nursing Home, Leixlip, Co Kildare, formerly of Grove House, Ardclough, Celbridge, Co Kildare, who died on 26 October 2021. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 179 Crumlin Road, Dublin 12; email: info@johnstonsolicitors.ie

Riojas, Celia (otherwise Sheila) (deceased), late of Acres, Burtonport, Co Donegal, who died on 25 October 2020. 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 Linda Duncan, Gallagher McCartney Barry, Solicitors, New Row, Donegal Town, Co Donegal; tel: 074 972 1753, email: lindad@gmblaw.ie

Thompson, Breda (née Mooney) (deceased), late of Ballylusk, Ballyfin, Co Laois, and formerly of 35 Cill Cais, Old Bawn, Tallaght, Co Dublin, who died on 16 February 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donalwdunne@securemail.ie

Walker, Martin (deceased), late of Tarmon, Blacksod, Ballina, Co Mayo, who died on 15 March 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan and Company, Solicitors, James Street, Westport, Co Mayo; DX 53002 Westport; tel: 098 25100, email: admin@patrickjdurcan.ie

Walton, Michelle (deceased), late of Ahidelake, The Bungalow, Ring, Clonakilty, Co Cork, and formerly of River Cottage, Clooncorban, Clonakilty, Co Cork, who died on 30 May 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding her will, please contact Ciaran O'Brien Solicitors, 43 Wolfe Tone Street, Clonakilty, Co Cork, tel: 023 883 3110, email: info@ciaranobriensolicitors.ie

TITLE DEEDS

Would any person having knowledge of the whereabouts of the title deeds to the property at 7 Farrenboley Park, Dundrum, Dublin 14, please contact Helen O'Riain & Co, Solicitors, 25 Baggot Street Lower, Dublin 2; tel: 087 687 9266, email: info@helenoriainsolicitors.ie

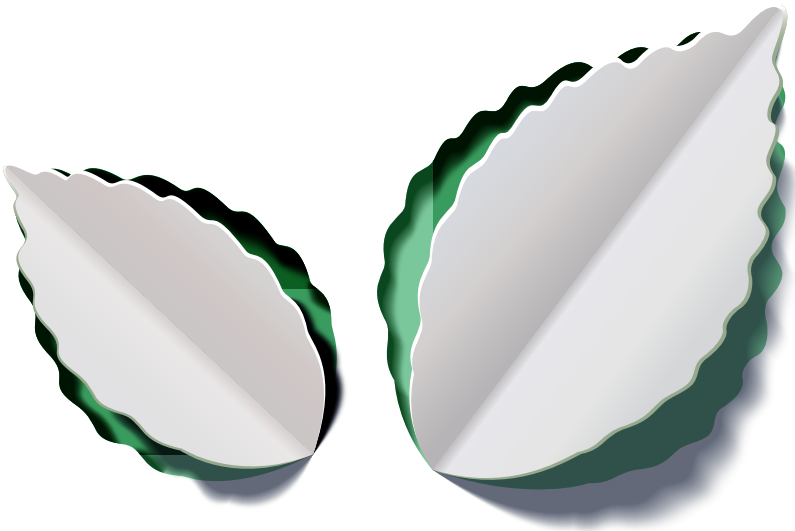
Would any person having knowledge of the whereabouts of original title deeds for 73 Leopardstown Avenue, Foxrock, Dublin 18, or if any firm is holding same, please contact Barry O'Beirne, Cullen & O'Beirne Solicitors, Suite 9, Mill Road, Greystones, Co Wicklow; tel: 01 888 0855, email: info@cullenobeirne.ie

Would any person having knowledge of the whereabouts of original title deeds for 18 Upper Pembroke Street, Dublin 2, or if any firm is holding same, please contact Barry O'Beirne, Cullen & O'Beirne Solicitors, Suite 9, Mill Road, Greystones, Co Wicklow; tel: 01 888 0855, email: info@cullenobeirne.ie

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by John White: in the matter of the land and premises known as no 58/59 Grenville Lane, Dublin 1

Take notice that any person having an interest in the freehold estate or any lesser, superior, or intermediate interest in the property known as and situate at 58/59 Grenville Lane, Dublin 1, in the city of Dublin, being the land demised by a lease dated 16 November 1953, made between Thomas Meagher of the one part and Peter Taylor of the other part for the term of 50 years commencing 1 September 1953, subject to the yearly rent of £2 and the conditions and covenants therein contained, should give notice of their interest to the undersigned solicitors.

Further take notice that the



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applicant, John White, being the person entitled to the lessee's interest under the said lease, intends to apply to the Circuit Court for the county of the city of Dublin for the acquisition of the fee simple and all intermediate interest in the said property, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

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

Date: 2 September 2022
Signed: EP Daly & Co, 23/24 Lower Dorset Street, Dublin 1 (solicitors for the applicant)

In the matter of the *Landlord and Tenant Acts 1967-2005*: an application by Edward Humphries

Take notice that any person having any interest in the freehold estate or any intermediate interest in the property known as 'Bambi's', and formerly known as 'Esplanade Stores', and also formerly known as 'Esplanade Cottage', Strand Road, Bray, in the county of Wicklow (the premises), being part of the property demised by an indenture of lease dated 14 April 1924 and made between Constance Power, Captain Charles Deveynes Smyth, Captain George Ernest Neligan, and John Norman Bailey of the one part, and Edward Humphries of the other part.

Take notice that Edward Humphries 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 premises, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of 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 said Edward Humphries 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 Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 September 2022
Signed: Cullen & O'Beirne (solicitors for the applicant), Unit 9, Mill Road, Greystones, Co Wicklow

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of the hereditaments and premises known as 3 South Great George's Street, Dublin 2, situate in the parish of Saint Andrew and city of Dublin: an application by Regal Estates Unlimited Company

Take notice any person having any interest in the freehold or any superior leasehold estate in the hereditaments and premises known as 3 South Great George's Street, Dublin 2 (the premises), including the leasehold estate demised by an indenture of lease dated 24 September 1875 and made between (1) Elizabeth Long and Peter Long (as lessors) and (2) John Hargreave Kennedy (as lessee) for a term of 400 years from 29 September 1875, subject to a yearly rent of £150, which leasehold estate was assigned pursuant to an indenture of assignment dated 9 January 1925 and made between (1) the Dublin (South) City Market Company and (2) Katie F Cant, Alice M Burns, and Francis P Long, and take notice that Regal Estates Unlimited Company intends to submit an application to the county registrar for Dublin for the acquisition of the freehold and any superior leasehold estates in the premises, and any party or parties asserting that they hold a superior interest in the premises are called upon to furnish evidence of title to the premises to the below named within 21 days.

In default of any such notice being received, Regal Estates Unlimited Company intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for such orders or directions as may be appropriate on the basis that persons entitled to superior interest(s) in the premises are unknown or unascertained.

Date: 2 September 2022
Signed: Vincent & Beatty (solicitors for the applicant), 67/68 Fitzwilliam Square, Dublin 2 (ref: 3671/42)

PRO BONOBO

Cat-flaps get seal of approval

● A seal pup invaded a New Zealand home, discommoded the cat, and crashed out on a sofa while innocent children slept unprotected upstairs, *The Guardian* reports.

The Ross family in Mt Maunganui were surprised to find the house had been broken into on 17 August by a fur seal – gaining access through a pair of cat-flaps.

Phil Ross – who happens to be a marine biologist – believes that the seal met Coco the cat outside and followed her into the house. He said it was unfortunate that he himself wasn't home at the time: "This is really the only family emergency where it would be useful to have a marine biologist in the house."

Beaver leavers get just desserts

● Beavers are to get legal protection in England, meaning it will be illegal to capture, kill, injure, or damage their breeding sites or resting places without a licence, *The Guardian* reports, again. The government has announced that the beavers will now be formally recognised as native wildlife.

Beavers were once widespread in Britain but were hunted to extinction 400 years ago. The first wild beavers were released in Scotland in 2009, where the species was granted legal protection ten years later.

It is thought that there may be hundreds of beavers already living wild along England's waterways, just like lawyers. And indeed they say that lawyers and beavers are quite alike – they get in the mainstream and dam it up.

I'm a firestarter

● An unnamed firefighter in his 30s from the south of France is reported to have been responsible for a series of wildfires, France24 reports (whew!). The man, a volunteer firefighter from the Herault region, was arrested on 27 July.

The case of the 'pyromaniac fireman' has shocked France, which has suffered from a spate of wildfires during the recent heatwave that forced the evacuation of thousands of people.

Prosecutors said the man admitted starting fires with a lighter on 26 May, 21 July and 26-27 July, adding: "He declared that he had done this in order to provoke an intervention by the fire brigade to save him from an oppressive family environment, and because of the excitement these interventions caused him. Adrenaline, he called it – these are his own words. He also said he had a need for social recognition."

If convicted, the man faces up to 15 years in prison and a €150,000 fine.

Secret Squirrel's squirrel secret

● With temperatures reaching 35°C, the New York City Parks Department urged residents not to worry about the health of squirrels (pronounced 'squirdles') seen sprawling on the ground, reports – you guessed it – *The Guardian*.

The department said: "If you see a squirrel lying down like this, don't worry; it's just fine.

"On hot days, squirrels keep cool by 'splooting' (stretching out) on cool surfaces to reduce body heat. It is sometimes referred to as heat dumping." g

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