



# CECI N'EST PAS UN CHAT

## Is ChatGPT just fake nous?



**PRACTICAL MAGIC**  
Aedamar Comiskey, chair of 'Magic Circle' firm Linklaters, talks to the Gazette



**UNFINISHED REVOLUTION**  
A Lithuanian-born solicitor played a key role in Ireland's struggle for independence



**CHAMPION IN THE RANKS**  
MHC partner Peggy Hughes talks about disability and inclusion



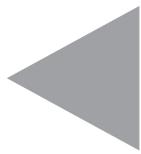
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# gazette

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# Calling all guardians of the law

**T**he conflict between the 'rule of power' and the 'rule of law' has been a feature in previous President's Messages, with a focus on how this dynamic has played out – not only on the continent of Europe, but also at home.

Recent proposed legislation, such as the *Planning and Development Bill 2022* and the *Patient Safety (Notifiable Incidents and Open Disclosure) Bill 2019*, has been highlighted as particular examples of proposed changes that significantly restrict the rights of our people.

Certain sections of the new *Personal Injuries Resolution Board Act 2022* have also raised issues of concern. This is particularly relevant to section 16 and also section 3(c) – yet to be enacted – which will require the lodgement of a medical report in order for the *Statute of Limitations* to stop. This section is contrary to previous High Court rulings and judgments and will cause significant difficulties for victims in their quest to access justice for wrongs suffered by them. This section, although not yet enacted, has been sought by the insurance industry, which has powerful lobbying status.

In this regard, two relevant sayings come to mind: 'A right extinguished is rarely restored and never expanded' and 'The only defence against a proposed extinguishment of the rights of a citizen is, in the first instance, the solicitor'.

It is the solicitor who identifies the attack on the rights of an individual and fights the battle to protect those rights. In this regard, solicitors are heroes – together with counsel – who, every day, bring these issues to the courts in the quest for access to justice.

## Erosion of rights

The 'rule of power' versus 'rule of law' conflict continues to have an impact on access to justice in our own country, for all of our people. It is, therefore, a call to all of us who are guardians of the law and protectors of the rights of our people to step forward and oppose the erosion

of our citizens' fundamental right to access to justice.

The Law Society, as one of the guardians of the law, has lobbied the Personal Injuries Assessment Board and will continue to lobby Government in respect of the proposed restriction of the rights of citizens in relation to the proposed legislation. It is fortunate that we can rely on our independent, high-quality judiciary to also act as guardians of the law and protectors of our people's rights. The pressures on such rights are evident in all sectors, including our courts system. This is particularly relevant to the 'equality-of-arms' principle.

## Expert-evidence difficulties

Recent developments since COVID have resulted in difficulties for plaintiffs' solicitors in obtaining the necessary expert evidence from treating doctors, whereas defendants are fortunate to have the resource of a significant body of (often) retired consultants who are able to furnish that expert evidence without delay. A level playing pitch is necessary for all in the interest of justice. The continuance of a level playing pitch requires recognition of the inequality of the parties in both resources and also access to the expert evidence necessary for a victim to seek proper access to justice.

## Members' survey

Finally, I wish to remind all colleagues of the important members' survey launched by the Law Society that has already hit your inbox. The survey will be left open for an extended short period, and we ask everyone to contribute and to have their say in the future of their legal practice and the future of the Law Society.

As a further step in encouraging communication with our members, the *Gazette* is seeking contributions for a reinvigorated letters page, in which we wish to hear from you about your observations, suggestions, concerns and views. It is time to put pen to paper or, indeed, fingers to keyboards!



A RIGHT  
EXTINGUISHED  
IS RARELY  
RESTORED  
AND NEVER  
EXPANDED

*Maura Derivan*

MAURA DERIVAN,  
PRESIDENT

# THE BIG PICTURE





## WE CAN DANCE IF WE WANT TO

Bears have a bit of a poor reputation in some parts. It's probably down to some of the more 'species-ist' reporting of that whole 'Goldilocks affair', where a delinquent pre-teen broke into and burgled a bear family's abode – and got away with it. And then there was the picnic debacle... But it's good to know that bears do more in the woods than they're given credit for. Like this European brown bear, partying like it's 1999 in a Finnish forest

# Diplomats convene at Blackhall Place



ALL PICS: CAN REMOND

EU ambassadors and representatives from the European Parliament, EU Commission, Department of Foreign Affairs, and Department of Justice were guests of Swedish Ambassador Magnus Rydén at Blackhall Place on 29 March. The occasion was one of the highlights of the Swedish EU Presidency calendar in Dublin



President Maura Derivan welcomes the gathering



Italian Ambassador to Ireland, Ruggero Corrias



Yaron Oppenheimer (deputy head of mission, Embassy of the Netherlands in Ireland) and Andrejs Kovaļovs (counsellor, Embassy of the Republic of Latvia in Ireland)



Petr Kynšetr (Czech Ambassador to Ireland) and Charis Christodoulidou (Cypriot Ambassador to Ireland)



Ambassador Magnus Rydén addresses the distinguished audience



Minister for Justice Simon Harris



Questions and answers



Emma McHugh (Department of Justice), Mark Garrett (director general, Law Society), and Ruggero Corrias (Italian Ambassador to Ireland)



Ambassador Magnus Rydén and President Maura Derivan enjoy a joke



Magnus Rydén (Ambassador of Sweden to Ireland) and Paul Keane (Honorary Consul General of Sweden and Law Society Council member)

# New Environmental and Planning Law Committee



ALL PICS: CIAN REDMOND

The Law Society launched its new Environmental and Planning Law Committee at Blackhall Place on 29 March. Speakers included Law Society President Maura Derivan, chair Rachel Minch SC (Philip Lee), and Ms Justice Nuala Butler of the Court of Appeal. Rachel is joined on the new committee by vice-chair Conor Linehan SC and members Andrew Jackson, Brendan Curran, Danielle Conaghan, Eoin Brady, Fergal Ruane, Nap Keeling, Nicole Ridge, Zoe Richardson, Gabriel Toolan and Clare Tarpey (secretary). It will assist the Law Society in its interventions in relation to law reform and legislative proposals and will provide expert knowledge and guidance to the Society, its Council, other committees and task forces



Rachel Minch SC (committee chair), Ms Justice Nuala Butler (Court of Appeal) and Law Society President Maura Derivan



Dr Geoffrey Shannon SC, Rachel Minch SC (committee chair) and Mark Garrett (director general)



Members of the new committee with guest speakers (front, l to r): Mark Garrett (director general), Rachel Minch SC (chair), Ms Justice Nuala Butler, Law Society President Maura Derivan, and Conor Linehan SC (vice-chair); (back, l to r): Nap Keeling, Eoin Brady, Zoe Richardson, Fergal Ruane, Danielle Conaghan, and Brendan Curran

## FACES IN THE CROWD



# EU asylum and immigration law in unsettled times



A one-day training seminar, 'EU asylum and immigration law in unsettled times', took place at Blackhall Place on 9 March under the auspices of the TRALIM Project. It was held in conjunction with the European Lawyers Foundation, Spanish Bar Association, Athens Bar Association, Italian Bar Association, Polish Bar of Attorneys-at-Law, Cyprus Bar Association, and Paris Bar Association. Pictured are Attracta O'Regan, Cindy Carroll, Joanne Williams, and Hilkka Becker



Vasileios Stathopoulos

ALL PICS: CIAN REDMOND



Hilkka Becker, Orode Oyiki, Dermot Manning, and James Waters



Ali Nezam (RNL Solicitors), Stevroy Steer (Steer Law Solicitors), and Reza Nezam (RNL Solicitors)



Mujeeb Awan, Shehzad Bajwa, and Kamal Vaid



Gerry McGrath (McGrath McGrane Solicitors), Andrea Vigani, and Cindy Carroll (International Protection Appeals Tribunal)

# Law Society hosts Central Bank SEAR event



ALL PICS: CIAN REDMOND

Attending a Law Society briefing event on the new Senior Executive Accountability Regime at Blackhall Place on 17 April were (l to r): Teri Kelly (director of representation and member services, Law Society), Peter Gallagher (head of enforcement advisory, Central Bank), Maura Derivan (president, Law Society of Ireland), Derville Rowland (deputy governor, Central Bank), Mark Garrett (director general, Law Society) and Gina Fitzgerald (head of financial risk and governance policy, Central Bank)



President Maura Derivan addresses the audience



Mark Garrett and Gina Fitzgerald take questions from the floor



## Justice bills prioritised

● The Government has published its **legislative programme** for the forthcoming session of the Oireachtas, which contains 39 bills for publication and priority drafting. The list includes a number of bills from the Department of Justice, including the **Domestic, Sexual and Gender-Based Violence Agency Bill**. This bill establishes an agency with responsibility for co-ordinating Government actions in this area.

A second justice bill listed for priority publication is the **Criminal Justice (Sexual Offences and Human Trafficking) Bill**, which provides for legislative amendments arising from the **O'Malley Review** and recommendations from the **Law Reform Commission**. This bill will also put the **National Referral Mechanism for human trafficking on a statutory footing**.

A number of other bills listed for priority drafting include the **Defamation (Amendment) Bill**, the **Garda Síochána (Powers) Bill**, the **Inspection of Places of Detention Bill**, and **Sale of Alcohol Bill**.

## Ardchúrsa Cleachtadh Díl as Gaeilge

● The PPC elective **Advanced Legal Practice Irish/Ardchúrsa Cleachtadh Díl as Gaeilge** is open to practising solicitors who wish to be registered on the Society's Irish Language Register/*Clár na Gaeilge* on meeting the attendance, coursework, and assessment criteria. A Leaving Certificate higher-level standard of Irish is

the minimum entry standard.

This course runs from 29 May until 29 June 2023 and the fee is €625. Online registration is open. For more information and the application form, see [lawsociety.ie/find-a-solicitor/clar-na-gaeilge](https://lawsociety.ie/find-a-solicitor/clar-na-gaeilge) or contact Aisling Byrne (course executive) at [a.byrne@lawsociety.ie](mailto:a.byrne@lawsociety.ie), tel: 01 881 5709.

# Society seeks solicitors' say on strategy statement

● The Law Society is seeking the views of all solicitors to assist in the development of its 2024-2028 strategy, in a survey that has now issued by email.

This is an opportunity for solicitors to have their voice heard for their future and for the future of their Society. The Law Society wishes to hear how it can shape resources and capabilities for the solicitors' profession and in the public interest.

President Maura Derivan said: "The current statement of strategy for the Law Society expires in December 2023. Given the scale of the challenges that the profession and wider society have encountered over the last few years, it is necessary and prudent to review, adapt, and harness the potential of the Society for its solicitors, and taking into account the public interest.

"The world is going through an unprecedented level of change, which is set to continue. The next ten years will see substantial changes to the way in which we live our



lives and do our work. Much of that transformation will be mandated and regulated by changes in the law," the president said.

Director general Mark Garrett commented: "Against a changing landscape, and in developing the new statement of strategy, I see real opportunity for the legal profession and the Law Society – because we promote and advocate for the high standards that consumers, businesses and employees want more than ever. That is why we are committed to a proactive strategy to help mitigate the challenges and take advantage of the opportunities that the changes will bring."

The president added: "At this early stage of the process, we want to hear your views and your voice about what you believe are the priorities for the Law Society for the next five years."

From 19 April, solicitors have been receiving an email

from the Society's research partner Behaviour & Attitudes, with a link to complete the survey in May. It has the subject line 'Law Society Survey – B&A Research', and comes from the sender [info@bandasurvey.ie](mailto:info@bandasurvey.ie).

If you have not received this email, please contact Behaviour & Attitudes at [info@banda.ie](mailto:info@banda.ie), and they will send you the link to complete the survey.

The survey should take 10-15 minutes to complete. No preparation is needed, and all contributions are confidential and anonymised. It is vitally important that all members take this opportunity to share their practice experience and priorities through the survey.

Following the survey, the Society will continue to engage with its members through consultations, focus groups, and workshops to better inform the new strategic plan for 2024-2028. For more information or queries, visit [lawsociety.ie/strategy2024](https://lawsociety.ie/strategy2024).

# Ambassadors visit Blackhall Place

● “Your Excellency!” This was the greeting frequently heard at the Law Society’s headquarters on 29 March during a lunch for EU ambassadors and representatives of the European Parliament, EU Commission, Department of Foreign Affairs, and Department of Justice.

The occasion proved to be one of the highlights of the Swedish EU Presidency calendar in Dublin and was hosted by the Swedish Ambassador Magnus Rydén. As Honorary Consul General of Sweden and a member of the Council of the Law Society, Paul Keane had the privilege of welcoming the distinguished assembly. The guests of honour were the Minister for Justice Simon Harris and Law Society President Maura Derivan.

**Multilingual welcome**  
President Derivan welcomed the guests in Swedish, French, Irish and English, and thanked Ambassador Rydén for his hospitality. She congratulated Sweden on the reopening of its embassy in Dublin, adding that the country’s affairs had been “protected, fostered and nurtured by the very capable consul general for Sweden – our own Council member Paul Keane and his team”.

Moving to current affairs, President Derivan asked: “Which one of us would have believed four years ago that we would proceed to encounter the horrific pandemic of COVID and would also see a land war on our continent and on the doorstep of several of our brother-and-sister countries – or that our lives and societies would change so much?”



Ambassador Magnus Rydén addresses the distinguished audience

When she had been appointed president, she said that she had taken as her theme ‘Access to justice’, specifically focusing on the ‘Rule of power versus the rule of law’.

“The European Union is founded on core values of promoting peace and working together for the benefit of a sustainable economic and political Europe,” she said. “Human rights and upholding the rule of law are important cornerstones of the EU, and access to justice is an important aspect of this. To have a properly functioning civil society, we all must be able to access justice when we need it,” she warned.

She asked those present to ensure that power did not overtake justice and the rights of Europe’s people: “There must always be equality of arms. I urge you all to be vigilant to protect each other, and to protect the rights of all our people.”

Ambassador Rydén drew attention to the common concerns that Sweden and Ireland share, and to the priorities set by the Swedish government in its role as president of the EU Council. These are support for Ukraine, continued pressure on Russia, climate and energy issues, and long-term EU competitiveness. Sweden was leading the work in the council towards the goal of making the EU safer, greener, and freer, he said.

The ambassador also celebrated the decision to reopen the Swedish Embassy in Dublin. For the past 13 years, Swedish ambassadors have travelled frequently to Ireland, but were based in Stockholm. Consular and support services for Swedish citizens in Ireland had been provided by the consulate based in the office of Reddy Charlton LLP during that time, headed by Honorary Consul General Paul Keane.

## President’s Conference sold out!



● The Law Society of Ireland President’s Conference 2023 is now sold out. The theme of the conference, which takes place on 12 May at Mount Juliet Estate, Kilkenny, is ‘Your future – building a successful legal profession, legal career and legal practice over the next decade’.

The conference will run from 11am - 5.15pm. Attendance will give one CPD hour in regulatory matters, and four in management and professional development skills (by group study). This total of five CPD hours fulfils the ‘in-person’ CPD scheme requirement for 2023. The conference programme can be downloaded at [www.lawsociety.ie](http://www.lawsociety.ie).

## Second place in global moot

● A team of trainees representing the Law Society has been placed second at the Stetson International Environmental Moot Court Competition in Florida.

Ruby Barlow (DLA Piper), Emma Kennedy (Arthur Cox), and Sophie Quinlan (A&L Goodbody) were coached by TP Kennedy (director of education), who described them as a great team that stood up well to a gruelling schedule.

## ENDANGERED LAWYERS

**ALICE NKOM, CAMEROON**



PICT:ALAMY

● Alice Nkom (78) was the first woman to be admitted to the Douala bar in 1969, which she helped found at a time when the profession was mainly practised by white male lawyers from France.

She started work as a business lawyer but, in the early 2000s, saw young homosexuals going through the courts. Homosexuality carries a five-year prison sentence and a hefty fine. "During my hearings, I saw these poor young people being systematically sentenced for their sexuality and who only wanted to run away after they were released. For me it was unacceptable", she recalls. "I started to study the issue and to ask myself how I could bring this debate to the national table. They needed someone with a megaphone to explain that they are full citizens with rights – and not outsiders."

In 2003, she founded the first anti-homophobia NGO in Cameroon, the Association for the Defence of Homosexual Rights, which few were able to join for fear of being outed. This was followed by another NGO focusing on health.

The more Nkom spoke about her fight in public, the more she was threatened: "At one point, I was receiving threatening phone calls day and night ... It was very violent." But she continued with her work. "I would go round the courts, watch for homosexuality trials all over the country and set myself up to be the defence for these young people that nobody was taking care of."

The criminalisation of homosexuality was not in the original 1965 penal code, but was introduced by Cameroon's first president in 1972 using executive powers. She sees a clear relationship between the democracy vacuum and the creation of a convenient external threat. In 2011, she was threatened with arrest for receiving an EU grant for her NGO. She was detained without charge by police while visiting clients and recommended for dismissal by the justice minister. Other Cameroonian lawyers have accused Nkom of "spoiling the youth" and have gone on TV to publicly state how she should be put to death. The justice minister requested the Bar Council to disbar Nkom because she was "promoting homosexuality". Her adult children have also been threatened.

Arrests in the LGBTQ community continue. She seeks support for international pressure to change the law: "I have no reason to stop. I have one last fight to wage: to get homosexuality decriminalised in my country."

*Alma Clissmann is a recent member of the Law Society's Human Rights Committee.*

## Women in Leadership applications open

● The Law Society is inviting applications for this year's Women in Leadership Mentoring Programme. Applications are welcome for both mentors and mentees, on a countrywide basis, and from all areas of practice.

The programme aims to enable women to advance their careers to a more senior level, and provide the support that may contribute to their successful careers. It is presented in collaboration with Law Society Skillnet, which is responsible for the mentor and mentee training activities.

Mentees may have concerns about how to progress to the next role, need help to develop a difficult new skill, or need guidance through turbulent times. Mentors are invaluable for offering this help and guidance. For mentors, passing on experience and knowledge can be very rewarding. Participation is a great way to give back to others in the profession.

### Timelines

- *April 2023* – applications from both mentors and mentees open (closing date for applications is Thursday 22 June 2023),
- *July 2023* – matching takes place,
- *August 2023* – applicants (mentors and mentees) are informed via email if they have been successfully matched, in line with application preferences, and given access details to the Law Society Skillnet mentor and mentee self-paced online courses (this course must be completed in advance of the training session in September),



- *September 2023* – one-hour training in best-practice mentoring techniques session – training will be on-site, or online through the self-paced courses, and follow-up sessions are eligible for CPD hours,
- *September 2023* – following successful completion of training, applicants are informed of the match details (name and contact details of the mentor/mentee),
- *October 2023* – mentoring relationship begins – contact deadline of 13 October 2023,
- *May 2024* – the mentoring relationship comes to an official end.

### Time commitment

Please bear the time commitment in mind before submitting your application:

- Self-paced training – 1.5 hours,
- Online Zoom session – one hour,
- One-hour meeting (approximate) for each month of the eight-month programme,
- Total time commitment – ten hours (approximate).

Additional information is [available online](#). Contact programme manager Shane Farrell with any queries. Questions about training should be addressed to Gwen McDevitt at [lawsocietyskillnet@lawsociety.ie](mailto:lawsocietyskillnet@lawsociety.ie).

# Health and safety spring conference

● The Health and Safety Lawyers' Association of Ireland hosted its spring conference on 9 March. The event was held at Eversheds Sutherland in Dublin and was chaired by Mr Justice Paul Burns (High Court). Remy Farrell SC and Madeleine Abas were the guest speakers.

Farrell discussed investigation, prosecution and sentencing trends in Ireland. He focused particularly on the factors the court considers in deciding the sentence to be imposed, as set out by the Court of Appeal in *DPP v Kilsaran Concrete Ltd* (2017). He noted that the courts have moved away from considering any compensation paid to the victim as a persuasive mitigating factor in sentencing. He also discussed the impact of the lack of sentencing guidelines for health-and-safety prosecutions

in Ireland, and the inflationary effect that introducing guidelines might have.

Madeleine Abas (one of the founders of the Health and Safety Lawyers' Association in Britain) gave an overview of investigations, prosecutions, and sentencing by the Health and Safety Executive in Britain. Death-related cases attract a compulsory criminal investigation, she said.

However, if a case were likely to garner media attention, or it appeared that a case might be easily prosecuted, it would likely select this type of case for prosecution.

To find out more about the work of the association or to become a member, visit [www.hslai.com](http://www.hslai.com), email [info@hslai.com](mailto:info@hslai.com), or contact any member of the committee.

## Chicago Bar visits Emerald Isle

● The Chicago Bar Association (CBA) visited Ireland in April for a continuing legal education seminar.

Members of the Law Society's Guidance and Ethics Committee, Justine Carty and Susan Martin, were invited to take part in a discussion with the chair of the Bar Council Sara Phelan SC and second vice-president of the CBA John C Sciacotta on the topic of 'Legal ethics in the US and Ireland'. This lively and interesting debate contrasted the obligations of Irish solicitors pursuant to anti-money-laundering and the US approach.



Susan Martin (DSBA president) and Timothy S Tomasiak (CBA president)

The CBA closed the conference with a dinner held at the King's Inns, where the guest speaker was Chief Justice Donal O'Donnell.

## IRLI IN AFRICA

### ECONOMIC AND FINANCIAL CRIMES COURT



Gilbert Phiri (DPP, Zambia), Barry Donoghue, Judge Alexander Owens (Ireland), Bronagh Carr (Irish Ambassador to Zambia), Zambian Chief Justice Mumba Malila SC, Lynn Carlin, Noel Rubotham, Norville Connolly (IRLI), Brian Caden (first secretary, Irish Embassy, Zambia), and Sean McHale (IRLI)

● One of the key objectives of Irish Rule of Law International (IRLI) in Zambia is to support the new Economic and Financial Crimes Court. Set up in early 2022, this anti-corruption court is struggling to ensure that cases are properly heard and concluded in a timely manner. This is due, among other things, to a lack of judicial capacity and an urgent need for prosecutorial training.

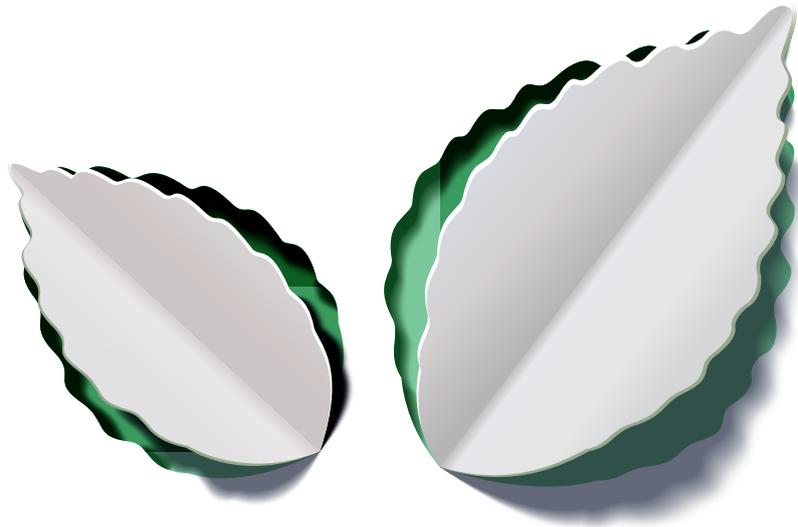
Alongside our local justice sector partners, my colleague Sean McHale (director of programmes) and I recently led the formation of a steering group to arrange a conference on economic and financial crimes. It would be an opportunity to bring Irish and Northern Irish experts to Zambia to share their expertise on financial crime, and ultimately support the new court.

On 14-15 March, the Economic and Financial Crimes Conference took place in Lusaka. Opened by Irish Ambassador to Zambia Bronagh Carr and the Chief Justice of Zambia Mumba Malila SC, keynote addresses were made by Zambia's Director of Public Prosecutions Gilbert Phiri SC and the director general of the Anti-Corruption Commission Tom Shamakamba.

Over two productive days, Irish experts shared their vast experience in the field, including Judge Alex Owens, Mr Justice Peter Kelly, Noel Rubotham (former director of reform and development, Courts Service of Ireland), Lynn Carlin (assistant director, DPP, Northern Ireland), Barry Donoghue (deputy DPP, retired), and Kevin Kennedy (CAB).

We will be supporting the experts as they provide detailed advice on the new draft *Rules of Court*, as well as intensive judicial and capacity training. We are also looking forward to welcoming members of the Zambian legal community to Ireland and Northern Ireland, during which they will meet other experts and learn more about best practice in the prosecution and adjudication of economic and financial crime.

Norville Connolly is country director – Zambia and Tanzania, IRLI.



# PAPER LOVES TREES

European forests, which provide wood for making paper, paper-based packaging and many other products, have been growing by 1,500 football pitches every day!

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Source: Food and Agriculture Organization of the United Nations (FAO), 2005 - 2020  
European Forests: EU27 + Norway, Switzerland and the UK.



# 25<sup>th</sup> Calcutta Run launched



Mark Garrett (director general, Law Society), Orla O'Connor (chair and partner, Arthur Cox), Dan Fox (CEO, Johnson Hana), Maura Derivan (president, Law Society), Tom Doerr (vice-president – marketing, Johnson Hana), and Owen O'Sullivan (managing partner, William Fry)

● The Calcutta Run launch event for 2023 took place at the Arthur Cox HQ in Dublin on 23 March, with a large turnout.

This year is the 25<sup>th</sup> run, and the fundraising target is an ambitious €400,000 – but the organisers want to aim big for the silver anniversary run to help alleviate homelessness.

Over €5 million has been raised over 24 years, helping to support the two partner charities, the Peter McVerry Trust and The Hope Foundation.

At the launch, Orla O'Connor (Arthur Cox chair) welcomed everyone. The MC was journalist Matt Cooper, who spoke passionately about the cause. A previous participant, Cooper hosted a discussion with Brian Friel (Peter McVerry Trust) and Maura Lennon (Hope Foundation) on their various projects and initiatives.

Also speaking at the launch event were Maura Derivan (Law Society president), Mark Garrett (director general), and Owen O'Sullivan (managing partner, William Fry), who closed the proceedings.

The Dublin Run takes place on 27 May. People can either



Matt Cooper

walk or run the 5k and 10k routes through the Phoenix Park, and are welcome to bring children and four-legged friends. Every participant who raises funds will receive a technical t-shirt, barbecue ticket, and a goody bag.

The Rogers Recruitment Calcutta Tag Tournament

takes place on 6 May, and the Calcutta Golf Classic on 19 May, to support fundraising efforts in other ways.

The Cork run will take place on 28 May – participants can join a 5k walk/fun run in Blackrock, suitable for all ages and abilities, followed by a free barbecue on the grounds of Blackrock National Hurling Club.

In all, over 1,200 people took part in the 2022 Calcutta Run, raising an incredible €270,000.

For more information or to register to take part in the various events, visit [www.calcuttarun.com](http://www.calcuttarun.com).

## Blackhall to host EdTech conference

● The Irish Learning Technology Association (ILTA) has announced that the Law Society will host the EdTech2023 conference from 1-2 June. Blackhall Place previously hosted the conference in 2016. The conference theme, together with a call for papers, will be announced shortly.

ILTA is a community of researchers, practitioners and industry professionals with a shared interest in technology-enhanced learning across Ireland. It organises regular events, and the EdTech conference takes place annually.

ILTA's 1,800 members are drawn from Irish higher-education institutions, further education and training providers, industry vendors and agencies, professional bodies and Government agencies, alongside other stakeholders interested in technology-enhanced learning.

## Injury claims down – but damage claims up

● Central Bank data show that the total number of settled motor-insurance claims during a six-month period in 2022 came to 67,000 – with 94% of these relating to damage, and 6% to injuries.

The cost of settling these claims reached €278 million, split 55% towards injury claims and 45% towards damage. The

report captures data up to 30 June 2022.

The cost of claims settled directly by the Personal Injuries Assessment Board (PIAB) has also fallen by between a third and half since the introduction of the new *Personal Injury Guidelines* by the judiciary in 2021. One-third of personal-injury claims were settled

through litigation for the period under review, according to the first mid-year *Private Motor Insurance Report* of the National Claims Information Database.

The data also show that, while the number and costs of damage claims rose, the number and cost of injury claims fell, with the effects offsetting each other.



## 100 YEARS OF WOMEN IN THE PROFESSION

The Gazette continues its series marking the centenary of the first women in Ireland to qualify as solicitors. For more information about related events during the year, see [www.lawsociety.ie/centenary](http://www.lawsociety.ie/centenary). Mayo woman Moya O'Connor was admitted to the Roll of Solicitors in 1941 and joined the family firm. Her legal legacy has inspired four nephews and two grand-nephews to follow in her footsteps.

### Lasting legal legacy

**M**oya O'Connor, from Swinford in Co Mayo, was born in 1917 and educated at Taylor's Hill Secondary School in Galway and later at UCD, where she obtained a BA in Legal Science.

Moya was admitted to the Roll on 14 July 1941. She

joined the family law firm of P O'Connor & Son, practising alongside her father Patrick (who was admitted to the Roll in December 1900), her brother Thomas (president of the Law Society in 1972/73), and her nephews Pat O'Connor (Law Society president in 1998/99), Tom, and John.

She served as deputy coroner for east Mayo for over 40 years and was also actively involved in many clubs and societies in Swinford and throughout the county. She was chairperson of the Mayo Branch of the National Council for the Blind.

An avid reader, Moya lived in 'The Cottage' with her sisters Biddy and Cara, who predeceased her. Her brother John W O'Connor was a barrister who practised on the Western Circuit and later became a judge of the Circuit Court and subsequently the Special Criminal Court, until

his death on 6 June 1978.

Her four nephews, Pat (coroner for Mayo), Tom (consultant solicitor), John (Circuit Court judge) and Tony (High Court judge), were admitted to the Roll of Solicitors, as were her two grand-nephews, William and Christopher (in 2011 and 2018 respectively).

In a tribute to Moya at Ballina District Court following her death on 13 July 1998, Judge Dan Shields described her as "an outstanding solicitor – one of the longest serving and most distinguished in the county". 



Moya O'Connor



PIC: PAUL HEVERIN, WESTERN PEOPLE, 30 OCTOBER 1991

A Mayo Solicitors' Bar Association celebratory dinner honoured solicitors Joseph King (Westport,) Michael J Egan (Castlebar), and Moya O'Connor (Swinford), who had completed 50 years in practice as solicitors

*Sources: past-president of the Law Society Pat O'Connor (nephew) and other family members provided much of the above information for the book Celebrating a Century of Equal-opportunities Legislation – The First 100 Women Solicitors, published by the Law Society of Ireland.*

## PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with [ps@lawsociety.ie](mailto:ps@lawsociety.ie) to share a story for this 'Professional Lives' column.

# Reach your optimal potential

If you are like many solicitors, you likely juggle multiple conflicting priorities in your personal and professional life. You may even dedicate your entire professional life to advocating for your clients. But you, too, are deserving of some focused time to engage in work on yourself to reach your potential and experience growth.

Psychotherapy can work in several ways to support legal practitioners, whether it's processing a past experience, uncovering a new perspective, creating hope, or finding a way to let go.

Counselling is available across the legal life-cycle, starting with trainees. A trainee solicitor had this to say about the Law Society's counselling service: "It has had a significant impact on my life. It has enabled me to stop judging myself and others, and try to be more compassionate towards the world and myself."

Another trainee added: "Counselling has given me a better understanding of my mental wellbeing and has enabled me to deal with the stresses of life. I have no doubt it will stand to me in both my personal and professional life."

Engaging in counselling early in your career offers an opportunity to develop self-awareness and emotional intelligence. For this reason, all trainees are encouraged to engage with the Society's

counselling service, offered by Law Society Psychological Services. Just over half of all trainees on the Professional Practice Course have availed of the service. By engaging in therapy in early adulthood, you might have the chance to explore some complex or challenging experiences in a containing way. Our thinking is that, later in life, it is likely that you may once again turn to therapy as you encounter later challenges.

Solicitors, too, are benefitting from the LegalMind service. LegalMind is an independent subsidised counselling and mental-health support. The service provides immediate access to qualified mental-health professionals who offer support with all aspects of personal and professional life.

One solicitor who availed of LegalMind commented: "In a word – 'excellent'. In two words – 'very beneficial'. In three words – 'to be recommended.'" Another practitioner said: "Talking, through counselling, can help you feel lighter and you can learn to find your voice, look for your safety and the support you deserve."

Law Society members, practising certificate holders, and post-qualification trainees can engage with LegalMind. In fact, you don't need to be in a moment of crisis to avail of counselling support. Often the best time to engage in counselling is when life

appears to be going relatively well. It offers a safe space to identify blocks, and overcome challenges and anxieties associated with professional life. It can even build resilience to everyday challenges, such as low mood, bereavement, high stress, financial worries or low self-confidence.



PIC: JASON CLARKE PHOTOGRAPHY

Members of the Law Society's Psychological Services team

### How to contact LegalMind

- Freephone 1800 81 41 77,
- Text 'Hi' by SMS or WhatsApp to 087 369 0010 (standard rates apply),
- Register for the online portal and find out more at [www.lawsociety.ie/legalmind](http://www.lawsociety.ie/legalmind). 

*Keelin Deasy is a Law Society trainee counsellor and a member of the Law Society Psychological Services Team.*

*Confidential, independent, and subsidised support is available through LegalMind for legal professionals. A team of qualified professionals can offer advice and support to help you grow personally and professionally and reach optimal potential. Freephone 24/7 on tel: 1800 81 41 77; see [www.lawsociety.ie/legalmind](http://www.lawsociety.ie/legalmind).*



# Cool for CHATS



Everyone is chatting about ChatGPT. And the legal profession needs a practical understanding of this technology in order to safeguard against inappropriate or damaging use. Labhaoise Ní Fhaoláin and Andrew Hines press CTRL-ALT-DEL



**n some ways, nothing has changed** – in other ways, everything has. The technology behind ChatGPT is not new. What is new is the scale of data, hardware, ease of use, and convincingly human-like output. This accessibility has resulted in a frenzy of activity – over 100 million users – resulting in wide public discourse and a tidal wave of news hype and opinion pieces.

Artificial intelligence (AI) refers to the application of computers to tasks for which human intelligence was traditionally required. The definition, scope, and usage of the term have changed and evolved since it was first coined. Computers have some distinct advantages over humans in their capacity to process large amounts of data, but can they be relied on to synthesise data rationally and make ethical decisions or human-like judgements?

OpenAI's ChatGPT, Google's BARD, and Meta's LLaMA are examples of an AI-



PIC: ALAMY

based technology called ‘large language models’ or LLMs. LLMs ‘learn’ the relationship between words through processing huge amounts of text. It can parse and formulate linguistic constructs like nouns and verbs, sentence formation, and how related phrases span paragraphs. This learning is ultimately based on complex statistics related to word relationships and occurrence frequencies.

### **The edge of tomorrow**

It is achieved using a number of mechanisms; firstly, through the equivalent of book learning by giving ChatGPT 300 billion words of documents, books, and

websites to read. Subsequently, human feedback is used to reinforce preferred responses from ChatGPT by surveying people (significantly, who are not subject-matter experts) on the best answer from a selection of alternatives. The system then relies more on the preferred style of response. Understanding this highlights the potential for bias in the system.

Media coverage of ChatGPT has led to hype about its capabilities, such as writing a legal contract or composing a sonnet about climate change. Most lawyers are familiar with PowerPoint’s capability to automatically change a presentation’s style format. For some time, email

and search engines have been able to suggest what you might want to type and to ‘auto-complete’ a phrase. When an internet search, autocomplete, and style are integrated, it is impressive – but it’s not intelligent. As Meta’s chief scientist Yann LeCun commented: “It’s nothing revolutionary, although that’s the way it’s perceived by the public. It’s just that, you know, it’s well put together, it’s nicely done” (ZDNet.com, 23 January 2023).

**C**hatGPT uses grammar rules to structure a sonnet. It has a vast library of information to draw from but, in the same way that a computer can beat a chess grandmaster, it cannot think for itself and extrapolate ideas beyond the tasks it has been trained to complete.

Chess and sonnets are examples of highly structured activities with clear rules. With more subtle tasks or more obscure topics, filling in the gaps is a risk. LLMs like ChatGPT are prone to what is called ‘hallucination’, resulting in assertions that can be wildly incorrect – for example, that infant digestion of breast milk is improved by adding porcelain chips, as reported in a recent *Financial Times* article.

### The gods themselves

Legal professionals are trusted advisors whose work product is relied upon in situations where there may be significant associated risk to clients and society. This is why the profession is regulated.

ChatGPT is a commercial product, based in another jurisdiction, and the output cannot be relied upon with respect to compliance with the GDPR. It does not provide any guarantees about reliability of facts or error-free work product. Whereas with a traditional

search via Google or Lexis Nexis you can control which of the presented search results to review or rely upon, ChatGPT provides a synthesised single result. You are not presented with any context through which to interpret the material. It is just that – material that is moderated by an algorithm based on statistics and probability of the frequency of words in the training data, which is further optimised and tweaked through small group surveys asking people to rate their preferred ChatGPT responses to given questions. This presents risks that the system could, in the future, be targeted to make it learn and provide false or biased material.

Lawyers rely on the relevant law, background and matter context, and their own experience when assessing a new case or matter. While ChatGPT may have access to knowledge, it cannot synthesise it through the lens of the current matter or apply experience and expertise. Topic summaries provided by ChatGPT, even when they are basically correct, have been characterised to have “lacked depth and insight” (*Stem Cell Reports* editorial, 10 January 2023).

### Nine tomorrows

So, how might ChatGPT and similar technologies be applied by practitioners?

*Reducing repetition and human error:* ChatGPT’s dialogue-based interaction provides a natural and iterative style of querying, compared with a traditional search engine. A question can have follow-up questions or requests to refine, adapt, or augment your query. ChatGPT ‘remembers’ the context across the conversation.

ChatGPT’s command of the English language and capability to rephrase, or translate into a plain-English style, is a valuable tool for practitioners. This has

great potential for providing alternative jargon-free versions of legal text – although it must still be subject to human review and approval for correctness. Care needs to be exercised in considering the reverse. While ChatGPT can comply with a request to rephrase something in the style of a judge, its reliability to correctly apply terms of art in more formal language cannot be relied upon.

It also has the potential to reduce human error through acting as a prompt – for example, by providing reminders or examples of standard clauses for a contract and factors to consider. The potential to streamline and speed up repetitive boilerplate drafting processes (for example, letters or memos) is clear.

**H**owever, it is important to note that OpenAI’s privacy policy and terms of service make it clear that any content you provide within the web interface – including “the input, file uploads, or feedback” – can be used by them to provide or improve the service, unless you actively opt-out of this condition. (There has already been a data leak of users’ prompts.) However, even if you opt-out, asking ChatGPT to reword a contract for you and uploading the draft would, most likely, breach your client-confidentiality obligations.

*Summarisation, legal research, and discovery:* ChatGPT provides a rapid summarisation capability for documents and can potentially help with reading into a topic, as long as the reader is aware that the summary provided may have omitted a piece of information that is essential to their case. For research, summaries provided by ChatGPT cannot be relied upon as comprehensive or accurate. Without the capacity to identify its sources, it can only act as a starting prompt for research.

ChatGPT has potential for discovery and many legal research activities, including information retrieval, document review, language translation, document labelling and classification, scheduling, and even automated redaction. For all of these, it needs access to in-house files.

ChatGPT achieves this through a service called ‘plugins’ that are still in the very early stages of development. They will allow integration with in-house knowledge-management and IT systems so that responses can integrate private documents or carry out tasks on your behalf, such as booking flights. However, the potential uses

THERE ARE SIGNIFICANT COPYRIGHT QUESTIONS ARISING FROM THE UNDERLYING SOURCE MATERIAL USED TO TRAIN CHATGPT. WHILE FAIR-DEALING AND FAIR-USE EXCEPTIONS VARY BETWEEN JURISDICTIONS, THE RELEVANT LAW IN IRELAND WOULD NOT PERMIT THE USE OF THE COPYRIGHTED MATERIAL IN THIS INSTANCE



## CHATGPT IS A COMMERCIAL PRODUCT, BASED IN ANOTHER JURISDICTION, AND THE OUTPUT CANNOT BE RELIED UPON WITH RESPECT TO COMPLIANCE WITH THE GDPR. IT DOES NOT PROVIDE ANY GUARANTEES ABOUT RELIABILITY OF FACTS OR ERROR-FREE WORK PRODUCT

and associated risks remain unclear, as LLMs lack the understanding of potentially tacit concepts relating to privileged information or ethical walls. What is clear is the potential for data leakage, which alone is concerning.

### The caves of steel

Over-reliance on a technology to deliver work products to a client presents an existential risk to the profession's position as trusted advisors. If content produced by ChatGPT were used in the provision of legal advice, would the solicitor be able to explain their thought process in applying their mind to the problem presented to them? If a client became aware that ChatGPT contributed to the provision of legal advice, would it devalue the work? Reliance on ChatGPT or other LLM-based systems could also reduce opportunities for upskilling in knowledge acquisition and critical thinking.

There are also implications with regards to professional obligations, professional negligence, and insurance: "Solicitors are under a duty to exercise their professional skill and judgement when acting on instructions. A solicitor must then advise on whether what is required is proper and legal" (*Solicitor's Guide to Professional Conduct*, 2022).

Solicitors will be familiar with the definition of the standard of skill required of a professional as being that of an "ordinary skilled man exercising and professing to have that special skill" (*Bolam v Friern Hospital Management Committee* as approved in Ireland by *Ward v McMaster*).

In a negligence action, if a solicitor has relied on ChatGPT in providing advice, they may find it difficult to argue that the service they provided was of a reasonable standard, due to a failure to exercise their skill. Even if the use of ChatGPT becomes an accepted practice within the profession, this will not necessarily provide a full defence to a negligence claim (see *Roche v Peilow*, *ACC Bank Plc v Johnston*, *Kelleher v O'Connor*). As to whether insurance companies will seek to limit indemnity in cases where ChatGPT has been used, this remains to be seen.

### Prelude to foundation

Given that the provenance of information is of critical importance in law, the use of ChatGPT is problematic. The origin and factual reliability, along with the GDPR and copyright status of material produced by ChatGPT, is undisclosed and potentially unknown to the creators. According to OpenAI, ChatGPT's data comes from many sources, including publicly available data, scraped webpages (for example, Wikipedia), and data licensed from third-party providers. Therefore, while a vast amount of data is available, its accuracy is questionable. Indeed, ChatGPT itself provides a conflicting position on sources when asked about which third-party data it uses, asserting that it "does not have access to any licensed third-party data providers".

There are significant copyright questions arising from the underlying source material used to train ChatGPT. While fair-dealing and fair-use exceptions vary between jurisdictions, the relevant law in Ireland would not permit the use of the copyrighted material in this instance.

It is common practice for law firms to retain copyright over their work product in their terms and conditions of business. The question arises whether the output of ChatGPT can be copyrighted. OpenAI specifically assigns the IP of the output to the user. However, it does not guarantee that the output of ChatGPT is a unique response, nor can it guarantee that copyright has not been infringed in the creation. The ability to assert copyright over work that encompasses ChatGPT outputs is unclear.

### The positronic man

In scraping social-media websites for use in training data, it seems highly likely that ChatGPT has breached the GDPR in respect of personal data, and this data may find its way into ChatGPT responses. The wider GDPR issues surrounding data collection (including obligations regarding data minimisation), security, fairness and transparency, accuracy and reliability, and accountability also arise.

A response from ChatGPT tries to reassure users, saying: "It's worth noting that the developers of ChatGPT

# Tailte Éireann, a new State agency to manage and develop Ireland's land, property, and location data.

The Property Registration Authority, the Valuation Office, and Ordnance Survey Ireland have merged to become a new organisation called Tailte Éireann.

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## YOU ARE NOT PRESENTED WITH ANY CONTEXT THROUGH WHICH TO INTERPRET THE MATERIAL. IT IS JUST THAT – MATERIAL THAT IS MODERATED BY AN ALGORITHM BASED ON STATISTICS AND PROBABILITY OF THE FREQUENCY OF WORDS IN THE TRAINING DATA

have taken steps to ensure that the training data does not include any personally identifiable information or sensitive data that may infringe on user privacy or violate any data-protection regulations.”

Every user must register with a telephone number and login to use it, meaning that every interaction with ChatGPT is bound to an individual user, across every device or computer they use. From a privacy perspective, as the Cambridge Analytica and Facebook case showed, it is naive to blindly trust a company not to use such data for personalisation, targeted advertising, or other unexpected or unwanted ways. Italy’s data protection agency is already investigating a suspected breach of data collection rules, as ChatGPT may have failed to verify that users were over 13 years of age.

### The end of eternity

It is only six months post-launch, and ChatGPT has already been rapidly and widely adopted. It has the potential to change the way we search and access information, how we write everything from emails to contracts, and even how software code is written.

**A**s a profession that deals in words, lawyers are faced with a technology that has implications for practices as large as the transitions from typewriters to word processors, and from paper to electronic records. The benefits and appeal of ChatGPT are apparent from an efficiency and cost perspective, but need to be tempered by an awareness of the significant underlying risks of undermining the value and integrity of the legal services provided.

*Labhaoise Ní Fbaoláin is a member of the Law Society’s Technology Committee. She is completing a PhD in the governance of artificial intelligence, funded by Science Foundation Ireland at the School of Computer Science, University College Dublin. Dr Andrew Hines is an assistant professor in the School of Computer Science, University College Dublin. He is an investigator at the SFI Insight Centre for Data Analytics, a senior member of the IEEE, and a member of the RIA Engineering and Computer Sciences Committee.*

## LOOK IT UP

### CASES:

- *ACC Bank Plc v Johnston* [2011] IEHC 502
- *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
- *Kelleher v O’Connor* [2010] IEHC 313
- *Roche v Peilow* [1985] WJSC-SC 1513
- *Ward v McMaster* [1988] IESC 3

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# Tales of the Unexpected

Monaghan woman  
Aedamar Comiskey is  
senior partner and chair  
of the 'Magic Circle' firm  
Linklaters. She speaks to  
Mary Hallissey about her  
career, the joys of doing  
the deal, and dealing with  
the unexpected



“J

**ust get on with it. That’s a pity, but just get on with it!”**

That was the advice dished out to future lawyer Aedamar Comiskey by her parents whenever things got tough as a child, growing up in a family of four sisters and one brother just outside Monaghan town.

And she has taken that solid parental advice in spades, rising to the very top of her profession as senior partner and chair of the ‘Magic Circle’ firm Linklaters, leading a legal practice of 5,000 employees worldwide.

Being the fifth child of six made her robust and resilient, Aedamar believes: “I had to fight my way, to speak up and get my voice heard,” she says.

Warm and unpretentious, Comiskey was elected Linklaters’ senior partner for a five-year term in May 2021. The 185-year-old firm has 30 offices in 20 countries, with a total of 530 partners.

Beneath Comiskey’s affable and warm exterior, one senses that a steely core, combined with iron self-discipline, have propelled this Irish lawyer to the very top of her game.

A graduate from UCD in 1988, she made a long-term commitment to Linklaters, joining as a trainee in 1992: “I’ve been at Linklaters a long time, and I really like it,” she says. The diversity of backgrounds and nationalities are what really appeals to her, as well as working with lawyers who didn’t necessarily follow the traditional route of a university law degree. “It felt like an inclusive place from the off, and that really appealed to me.”

### **London calling**

London makes her feel unimportant, and that’s why she likes it: “It doesn’t matter what you do, or how wealthy you are, there’s always somebody who is doing something more important and more interesting. I like that – there’s great freedom in that.”

The liberty and cosmopolitanism of London is an enduring appeal, and she believes that her ‘ability to mix’ stems from her large Irish

**“A LOT OF WHAT WE DO IS IN A TEAM, AND TO GET THAT FLOW OF INFORMATION AND DIVERSITY OF THINKING. THAT’S THE BIT YOU MISS OUT ON IF PEOPLE AREN’T AROUND. THE REAL GEMS ARE WHEN YOU TALK ABOUT THINGS YOU WEREN’T PLANNING TO TALK ABOUT**

family background. “I’m very comfortable having to fit in anywhere. I find it interesting – I like that variety. I guess I’m very curious – ‘nosey’, my mother would call me!” she smiles.

She and her husband Mark Lyttle – a Dublin native, Olympian, and keen Laser sailor out of Dun Laoghaire – tried out a return to Dublin in the late 1990s. Ultimately, the bigger scale of a global city like London had too much appeal.

“My husband wanted to give it a go, and I thought that was fair enough,” Aedamar explains in her City of London office, overlooking the Barbican. “I was really happy here, but I felt that it was right to give that a go. I worked in A&L Goodbody for about eight months. Great people, and I still have lots of friends there. I had a great time, but I just missed Linklaters.”

Her husband continually sends her photos of properties beside the sea in Dublin, asking what she thinks. “That’s lovely, love, definitely one for when we retire,” is her response!

### The call up

With two older sisters studying medicine, Comiskey initially thought she might follow in their footsteps, but hospital all-nighters held no appeal: “I thought, that’s far too much hard work!” she recalls.

Her parents wisely realised that their children could work things out for themselves: “My father was wonderful, because he said: ‘It doesn’t matter what you do in university – it’s just a discipline’, which is 100% right,” she adds.

“I was trying to work out what to put on the application form, and I decided to go and see a fortune-teller in



## WOMEN IN LEADERSHIP

Applications are currently open for the Law Society’s Women in Leadership Mentoring Programme at [lawsociety.ie/womeninleadership](https://lawsociety.ie/womeninleadership). Perhaps you have been inspired by this article to provide mentorship to a female lawyer or would like to sign up to be mentored? Female and male mentors are welcome to take part.

Temple Street, in Dublin. She told me I should be a lawyer, and I thought, why not?" she laughs.

Gaily, Aedamar recalls winning a hatful of prizes at UCD law, vying with classmate and current High Court President Mr Justice David Barniville for the gold medals.

She describes her younger self as quite rebellious, but clearly with a strong streak of determination: "I was always quite good at studying. I did well in exams. Law was an interesting degree from the point of having to do so few hours. I thought: 'This is great, 12 hours a week!'"

Aedamar enjoyed the social side of UCD. She also had time for plenty of waitressing shifts in the 'Slow Boat' Chinese restaurant in d'Olier Street: "I loved it!" she recalls.

### Career opportunities

After graduation, she wanted to go into business and took a job for two years in management consultancy, with Andersen Consulting. The variety of working in different sectors appealed, as did the postings to Belfast and Chicago.

**E**ventually, Aedamar decided she was stronger at verbal reasoning and decided to go back to law – albeit she was three years behind her UCD classmates, which drove the decision to try London. She passed the New York Bar exam, but family proximity made London more appealing. Linklaters had a huge variety of trainees, from around 15 different countries:



"I really liked that," she reflects.

Aedamar lives in nearby Islington, and cycles to work in under 15 minutes, a convenience she loves. She and her husband Mark have three sons of 20, 17, and 14, and the eldest is now at university. "They're good fun, it's a very busy house. A little easier now they're older. The busiest time was when they were seven, four, and one," she muses.

### Stay free

As well as her parental duties, Aedamar sees her senior partner role as a pastoral one, with a good deal of reflection about what would make the firm even better.

"As senior partner, you're the guardian of the culture. We have values around excellence, integrity, commerciality, and diversity and inclusion – fostering excellence, but in a way that also enables people to be themselves," she reflects. "We're really trying

to get the best out of people and support them to perform to the best of their ability. Teamwork is core to the success of our business," she adds, particularly when helping to put together teams combining people with different strengths.

Aedamar believes that the Irish education system is second to none, and produces very strong graduates, whom she is always glad to see coming to London. "We are always delighted to get Irish grads – they do very well. Some of them stay and some go back, but it creates a strong network," she adds, with work referred over and back 'across the water'.

### Cool under heat

As a leading corporate mergers-and-acquisitions (M&A) expert, Aedamar is clearly in that cohort that combines IQ and emotional intelligence. Prior to the senior partner job, she was global head of corporate for the entire firm, leading 2,000 people for almost six years, and she did a lot of travel. She does even more travelling now as senior partner and is on the road every two weeks.

"I also try and spend 50% of my time with clients, talking to them and getting their feedback on how the firm is doing. Relationship-building – I've always loved that side of the job, and I have always been very client-orientated. I don't do the deals anymore, but I try and see the same number of clients, because I really like that aspect of the job," she says.

Does she miss the deals? "Of course! The adrenaline of landing a big deal – it's hard to beat."

If she wants to find something out, she doesn't look it up online – instead, she asks someone. Such an outward orientation has helped her in M&A deal-making.

"A lot of it is working out what it is that both sides are trying to achieve, and then what is needed to get that done. It often doesn't need to be contentious or hostile. It's people trying to get to an agreed position on buying or selling something. And I always enjoy that side of it: I love the negotiation, the tactics of getting stuff done. That interests me more than black-letter law. I always say, a lot of it is common sense, especially in M&A deals."

There's that emotional intelligence again.

"That's why I like being a lawyer," she laughs. "You're often trying to look for a compromise, to get to the end game. I find in the deals that I've done over the years, there are points that really matter to people and

## SLICE OF LIFE

### ● Biggest influence?

My parents – they always encouraged me to give things a go. It gave me lots of confidence – I thought there was nothing I wouldn't be able to do!

### ● What was your earliest ambition?

So many! I wanted to be a basketball player – not likely at 5ft 3 inches! I thought it would be great to be a barrister and get paid to argue all day. And I definitely went through a phase of wanting to be an actor.

### ● Which matters most – ambition or talent?

Both matter, but if you're very talented and you don't work hard or practise, you won't maximise your talent.

### ● Advice to your 20-year-old self?

If you want something, go for it. Don't be put off if people say you'll never be able to do it. Just ask yourself, 'Why not me?'. It's amazing how much of a difference it makes to reframe it that way.

### ● Preferred tippie?

Gin and tonic, with lots of ice and garnish.

### ● Favourite meal?

I really like a good Irish stew.

### ● How do you describe yourself?

Interested in what motivates people. Probably too outspoken on things, but I mean well, and I'm keen to learn and improve.



## YOU SHOULD BE THE MOST INTERESTED PERSON IN YOUR OWN CAREER, AND YOUR OWN LIFE. DON'T WAIT FOR SOMEONE TO TELL YOU HOW TO GET ON WITH IT

points that matter less. The key is to work that out to the satisfaction of both sides, and not to get bogged down in the small stuff," she comments.

She cites experience as being a major factor in M&A: "You get a lot smarter about how to get things done ... and how not to get bogged down or hit roadblocks late in the deal, because nobody likes that. You learn to address the big things upfront. That foresight comes with experience, with knowing the things to talk about at the outset. It's very transactional, but I like that," she says.

### Should I stay or should I go?

On Brexit, she believes that things are now moving in a better and more collaborative direction: "The idea of being adversarial about it makes no sense at all – Europe needs to all work together."

She also believes that New York is still quieter than it was pre-virus, while London is now coming back well: "The City is busier than it was," she says.

Post-pandemic, there is a need to embrace flexibility, she accepts: "In my mind, there is no doubt that people work very hard at home. For me, it's all about the culture and the glue, and for me, it's hard to have the same collaborative culture if people don't spend some time, face to face."

**F**ace-time builds rapport and bonds of trust, and makes it easier to extend the benefit of the doubt when things go wrong, she believes.

"What makes Linklaters the firm that I've always loved is that people do really like each other and enjoy working together," she adds. "It's good if people are in the office three days a week to build that glue," she says, while focused work can easily be done at home.

"A lot of what we do is in a team, and to get that flow of information and diversity of thinking. That's the bit you miss out on if people aren't around. The real gems are often when you talk about things you weren't planning to talk about," she adds.

### Train in vain

Great ideas don't necessarily come from planned interactions so much as casual encounters, she believes. "As much as we tried to recreate the same experience during lockdown, it's hard," she concedes. "It's so difficult to recreate on-the-job training – that learning by osmosis you get in the office."

"You can't sense people's irritation on Zoom calls," she notes, "and client concerns are better understood in the moment, rather than conveyed afterwards."

"It's an important skill trainees and all young lawyers need to learn – to deal with the unexpected client calls. Often when a crisis hits and clients need you most, it's something nobody was expecting. How are they going to learn how to deal with that, and inspire confidence somehow? It's very hard to learn how to deal with people when you're sitting on your own," she adds.

"Coping with the unexpected is all about building experience," she concludes. "You get through it and life goes on. Things don't go to plan, and you must deal with it in the moment. Everybody's learning all the time. I might be good at looking calm, but that's experience."

Life has been unnerving over the past while, between the pandemic and war in Europe, and it's important to know that it's okay to be unsure, Aedamar adds.

"It doesn't matter how senior you are, things don't always go to plan. Success is failure turned around – I really believe that. That's what people should really be admired and respected for – we learn a huge amount from our failures."

### I fought the law...

Juggling all the balls of family and career in the air is no doubt demanding. To relax, she watches Netflix and 'forces' herself to go to the gym, because exercise gives her energy. "I don't do it because I love doing it; I do it for the effect. If I don't exercise, I'm much more tired."

**I**n the difficult times, Aedamar Comiskey simply asks herself if she is doing her best, and tries to keep a positive outlook, rather than striving for perfection, which doesn't exist. "I have had times where I've been very stressed and felt, 'I'm getting nothing right'. You can make yourself feel quite bad, but it's totally a mindset. If I'm doing my best, then at the end of the day, I can't do more than that."

"Be proactive ... you should be the most interested person in your own career, and your own life. Don't wait for someone to tell you how to get on with it."

Perseverance is also a virtue, she believes, and sometimes we give up too easily: "If you want to get somewhere, keep trying. If it matters to you, keep going – just go for the top job!" concludes this goal-oriented, driven, and highly impressive lawyer.

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Mary Hallissey is a journalist at the Law Society Gazette.

# COUNTDOWN

New *Solicitors Accounts Regulations* will come into operation on 1 July 2023 in order to increase protection for client moneys and to address inadequacies in current regulations. Dr Niall Connors explains

**The Society welcomes the introduction** of new *Solicitors Accounts Regulations*, which come into operation on 1 July 2023. The purpose of the new regulations is to increase protection for client moneys and address provisions of the 2014 regulations that are considered inadequate or not sufficiently clear. The changes to the regulations arise following careful review and consultation with the profession, the accounting bodies, and other interested parties.

In accordance with the provisions of the *Legal Services Regulation Act 2015*, the Legal Services Regulatory Authority has notified the Society of its concurrence with the proposed changes to the regulations. The Society acknowledges that this announcement may cause alarm for members who view the demands of regulatory compliance as increasingly onerous. Members are assured that all changes to the regulations were made with due regard to the practicalities of implementing changes for all solicitors' practices, large and small. Nevertheless, the Society encourages members with particular queries and concerns to contact the Society if assistance is required.

The Society will continue to provide guidance to members on how to navigate the regulations in advance of them coming into force on 1 July 2023, and a CPD roadshow dedicated to this topic will take place nationwide, in partnership with county bar associations. By way of



PIC: ALAMY

introduction, however, the keys changes are identified below.

*Estate accounts:* the definition of client moneys has been amended to include moneys received by a solicitor acting as personal representative of an estate. Estate funds are to be lodged into the client account. It is no longer a requirement to open separate bank accounts.

*Balancing statements:* solicitors are required to prepare balancing statements in respect of transactions on the client account every three months, instead of every six months. More frequent balancing will result in earlier detection of deficits by the solicitor.

*Undue or unnecessary delays:* to address the problem of an accumulation of client ledger balances, solicitors are required to review the listing of client ledger balances for undue and unnecessary delay in dealing

with matters (in particular, in discharging undisbursed outlay, moneys due to clients, and moneys due to be paid for or on behalf of clients) and, where appropriate, take immediate action to deal with those matters.

*Balances outstanding two years or more:* solicitors are required to list client ledger balances outstanding two years or more as

at the accounting date, disclosing the reason the balance is outstanding and, where appropriate, the action taken or proposed to clear each balance. The balances are to be reported to the Society as 'Appendix 6' to the reporting accountant's report.

*Reporting accountant's report:* the reporting accountant's report is to be furnished to the Society within five months of

“ IN ORDER TO ALLOW THE PROFESSION TIME TO PREPARE, THE NEW REGULATIONS WILL NOT COME INTO OPERATION UNTIL 1 JULY 2023



## THE SOCIETY IS INTRODUCING NEW *SOLICITORS ACCOUNTS REGULATIONS*, THE PURPOSE OF WHICH IS TO INCREASE PROTECTION FOR CLIENT MONEYS

the accounting date, with an extension of one month if such extension is sought, in writing, 14 days prior to the due date. Final accountants' reports are to be filed within three months of the date of the solicitor ceasing practice or within such time as agreed with the Society.

*Compliance partner:* to emphasise the responsibility of solicitors for compliance with the regulations, the compliance partner/sole practitioner is required to confirm, as part of the 'Form of Acknowledgement', that:

- Each client and office balancing statement has been approved by the compliance partner,
- The listing of client ledger balances has been reviewed for undue or unnecessary delays in dealing with client matters, in particular in discharging undisbursed outlays, moneys due to clients, or moneys due to be paid to or on behalf of clients and, where appropriate, immediate action has been taken to deal with such matters,
- The list of client ledger balances outstanding two years or more has been approved by the compliance partner, and
- Back-ups of computerised information are performed on a timely basis and stored securely, other than on the practice-office premises.

**A** *uthorised signatory:* to address instances of staff fraud, a cheque signatory – that is, a person authorised to sign client-account cheques or to authorise electronic transfers – is to be a solicitor who is a partner or the sole practitioner in the firm with a practising certificate in force. Where there are co-signatories/authorisers, at least one is to be a partner or sole practitioner with a practising certificate in force. In exceptional circumstances, a person other than a solicitor who is a partner or sole practitioner may act as an authorised signatory/authoriser with prior written approval of the Society.

### Deficits

*Deficits:* if a solicitor cannot rectify a deficit of client funds within seven days of it coming to attention, the solicitor is required to notify the Society in writing, as soon as practicable.

*Loans from, to, or between clients:* solicitors cannot borrow from a client unless the client has been independently legally advised. Client accounts cannot be used for the purposes of loans to a solicitor from a client, or for loans by a solicitor to a client, or for loans between clients of a solicitor.

*Statements of account:* solicitors are to provide clients with a statement of account disclosing all moneys received, paid, or held in respect of each client matter, to the extent not already done so in a bill of costs, or otherwise.

### Client moneys

*Return money to clients:* solicitors are to return any client moneys in a client account as soon as practicable following completion of the provision of legal service and, in any event, a solicitor must not hold those moneys in the client account for a period longer than six months after the completion of legal services.

**R** *ceipts for cash payments to clients:* where a solicitor withdraws money from the client account by cheque or by electronic transfer for the purposes of making a payment in cash to a client or a third party in excess of €100, the solicitor is required to obtain documentary evidence of payment of such moneys – such evidence is to include the witnessed signature of the recipient of the moneys.

*Fees:* where moneys held are being applied in satisfaction of outstanding fees, solicitors must make that clear *in writing* (whether in a bill of costs or otherwise) to the client.

*Withdrawals from client account not related to a specific client:* to address a practice of withdrawing funds from the client account without identifying the client in respect of whom the withdrawal has been made, a solicitor must relate all withdrawals to a specific client at the time of the withdrawal.

*Bills of costs:* to ensure the primacy of the 2015 *Legal Services Regulation Act*, solicitors are required to maintain on file documentary evidence of compliance with sections 149-153 (inclusive) of that act.

*No legal services provided:* to address situations where solicitors hold moneys where no legal service is being provided, or after the legal service has been provided, client moneys (as defined by the regulations) do not include moneys received or held by a solicitor, other than in respect of legal services provided, or to be provided, arising from the solicitors practice as a solicitor.

*Personal moneys:* a solicitor cannot pass personal moneys through the client account. However, a solicitor may pay into the client account the proceeds of a loan to the solicitor from a financial institution specifically for the purchase of a property by a solicitor, provided the funds are discharged from the client account in accordance with the terms of the loan or within 14 days of receipt.

*Accounting records:* to ensure that an appropriate record of transactions is maintained, a copy of the document of record in respect of electronic transfers on the client account is to be retained on the client file and on a separate file dedicated to such transactions. Back-ups of computerised information are to be performed on a timely basis and stored securely, other than on the practice-office premises. A solicitor shall retain at the office premises the minimum accounting records for at least the current financial year and the previous financial year. A register of moneys held on joint deposit and a register of undertakings are to be maintained.

### Reporting accountant

*Withdrawal of approval of an accountant as a reporting accountant:* the Society is to provide reasons for withdrawal of approval of any accountant to act as a reporting accountant. A person who is not a member of one of the accounting bodies, per the regulations, cannot act as a reporting accountant.

*Examination by the reporting accountant:* reporting accountants are to test-check postings to client ledger accounts from records of receipts and payments of client moneys immediately before and after the accounting date, and at least one other balancing date, when entries to conceal deficits are most likely to occur. To address the issue of withdrawals from the client account under the guise of fees, the reporting accountant is to test-check that transfers of moneys from the client account to the office account are supported by appropriate bills of costs, and the written agreement with, or

notification to, the client of such transfers.

*Notification to the Society by reporting accountant:* where the reporting accountant forms an opinion or has reasonable grounds to suspect that there is a deficit of client funds that cannot be rectified within seven days, or that there are entries in the books of account to conceal the existence of a deficit, the reporting accountant may directly notify the Registrar of Solicitors.

**L**aw Society investigations: the Society may agree or require that investigations take place other than at the solicitor's place of business. Where a report discloses evidence of a material breach of the regulations, the Society may communicate with such persons and seek such information and documentation as the Society deems necessary in the circumstances.

*Responsibility for breach of the regulations:* the responsibility for a breach of regulations is to apply to solicitors who are principals, partners, and solicitors who handle client moneys.

*Transitional arrangements:* the *Solicitors Accounts Regulations 2014* continue to apply in relation to the filing of the reporting accountant's report where the accounting period has commenced before 1 July 2023.

### Here to help

The Society is here to guide and support members with any regulatory compliance issue they have. With two months to understand and prepare for the new *Solicitors Accounts Regulations*, members are reminded that the Society is a resource that welcomes all queries.

If you require assistance with navigating these updates to the financial regulatory regime, please email: [financialregulation@lawsociety.ie](mailto:financialregulation@lawsociety.ie).

*(This article does not form part of the regulations and is for assistance only.)* 

*Dr Niall Connors is Registrar of Solicitors and director of regulation.*



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*The proposed abolition of the legal right to trial by jury in High Court defamation proceedings strikes not just at an ancient legal right, but also at the concept of the participation of the public in the administration of justice, argues Mr Justice Bernard Barton*

# RUNAWAY JURY

## Among the proposed amendments

to the *Defamation Act 2009*, in the draft scheme of the *Defamation (Amendment) Bill*, is a proposal to abolish the legal right to trial by jury in High Court defamation proceedings.

The proposal is as controversial as it is surprising, since the perceived mischief that it seeks to remedy – the uncertainty and risk of disproportionate awards by juries in such cases – has already been comprehensively addressed by the Supreme Court in *Higgins v Irish Aviation Authority*. Henceforth, juries in defamation actions would have the benefit of guidance with regard to the level of damages appropriate to the circumstances of each case through the parameters set out in the judgment of MacMenamin J.

The proposal, if enacted, represents a radical departure from a long-settled public policy that lies behind the legal right of the citizen to jury trial: namely, that fact-finding in serious criminal and civil cases should be determined, where possible, by a jury of fellow citizens.

The principal *raison d'être* for the proposal, having been dealt with by the Supreme Court, calls for an examination of the consequences that will ensue (notwithstanding the decision of the court) if the proposed abolition of jury trial is nevertheless proceeded with, namely, the removal of the legal right to trial by jury and the removal of the public from involvement in the administration of justice – a concept as old as the



PIC ALAMY

common law itself. The significance of these consequences is best understood in the context of the right to jury trial in civil proceedings in general.

### Right to trial by jury

The entitlement to trial by jury as of right is of ancient origin in the common law. Considered to be of such importance that it was enshrined in the first forerunner of the modern constitution – the great charter of individual legal rights, the *Magna Carta* of 1215 – it has been part of the law ever since. Trial by jury evolved as the mode of trial in the common-law courts for civil as well as criminal proceedings.

**T**he sanctity of the right was reflected in the constitutional protection afforded thereto by the 1937 Constitution in respect of serious criminal cases, albeit the protection did not extend to civil causes of action (see *Murphy v Hennessy*). While the right to jury trial has its origins in the common law, the exercise thereof has long since been regulated by statute.

The concept of jury trial owes its Irish origins to the Vikings and the Normans. Involving individuals (other than the parties thereto) in the resolution of serious disputes

was part and parcel of Viking/Norse social fabric. This mode of trial was developed by the Anglo-Normans in medieval times. It became associated as a bulwark against the arbitrary misuse of authority, the exercise of which ultimately led to the inclusion of the right to jury trial in article 39 of the English *Magna Carta* 1215. The right was also enshrined in the 1216 Irish *Magna Carta* (see FH Berry, *Early Statutes of Ireland*, vol 1, 1907).

There were attempts to curtail or circumvent jury trial altogether in the centuries that followed – the most notorious example of which is the Court of Star Chamber (1487-1641). The court had a wide jurisdiction, which included causes for libel and slander. The court was abolished by act of the Long Parliament in 1641, which also reiterated the right to jury trial as provided for by *Magna Carta*. Thereafter, this mode of trial applied to all cases triable in the courts of common law: King's/Queen's Bench, Exchequer, and Common Pleas.

### Justification for jury trials

Jury trial had its supporters and detractors then, as it does now, coincidentally for many of the same reasons, which led to considerable political and legal debate. In his *Commentaries on the Common Law*,

the great 18<sup>th</sup> century jurist Blackstone defended and justified the concept of jury trial in civil matters as the best preservative of English liberty, for it had the distinct advantage of protecting the citizen against the risk of judicial caprice and “it preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachment of more powerful and wealthy citizens” – a justification that remains as valid today as it was when made.

**I**n Ireland, the common-law entitlement to a jury in civil proceedings was ultimately put on a statutory footing by section 48 of the *Judicature (Ireland) Act 1877*, which provided that nothing contained in the act or the rules of court made thereunder “shall take away or prejudice the right of any party to any action to have questions of fact tried by a jury in such cases as he might heretofore of right so required”.

And so the law remained until independence. Although the common law was carried forward by the Free State Constitution, a new system of courts to administer the law was established by the *Courts Act 1924*. The right to trial by jury in civil matters as declared by section 48

# THE IMPLEMENTATION OF THE PARAMETERS ON QUANTUM TO ASSIST JURIES SET OUT IN *HIGGINS* OUGHT FIRSTLY TO BE FACILITATED OVER A REASONABLE PERIOD IN PRACTICE BEFORE THE DRASTIC STEP OF ABOLITION IS CONTEMPLATED

of the 1877 act was continued, with minor modification, by section 94 of the 1924 act and section 20 of the *Courts Act 1928* (see *McDonald v Galvin*, *Lennon v HSE*, and *Higgins v Irish Aviation Authority*).

The entitlement to jury trial in civil proceedings remained undisturbed until the *Courts Act 1971*, section 6 of which abolished the right to civil jury trial in Circuit Court proceedings. The law remained otherwise unchanged until the passing of the *Courts Act 1988*, section 1 of which removed the entitlement in all personal-injury actions, excepting those for trespass to the person and false imprisonment.

## Subsisting extent of entitlement

While there has been a significant restriction on the exercise of the right in civil matters over the last 160 years –

commencing with the *Civil Bill Courts (Ireland Act) 1851*, the *Common Law Procedure Acts 1852-1856*, and ending with the *Courts Act 1988* – there appears to be a perception (common to the judiciary, the profession, and academics alike) that the cumulative effect of these statutory interventions has been to restrict the entitlement to jury trial as of right to a ‘few causes of action’ (see *Lennon v HSE* and *Higgins v Irish Aviation Authority*). However, this perception does not withstand careful scrutiny.

Although by far and away the most common causes of action tried by jury today are those concerned with the vindication of the fundamental rights of the citizen guaranteed by article 40 of the Constitution (namely, the rights to liberty, bodily integrity, free speech, and the right to a good name) through suits for false imprisonment, assault and battery, malicious prosecution and defamation, the entitlement to jury trial is far broader than appears to be generally appreciated.

While the restrictions on the right to jury trial in claims for damages for personal injuries (excepting false imprisonment and trespass to the person) brought about by the 1988 act may have added to the misconception that the right only survived in a few types of case, the position in law is altogether different. No cause of action was abolished by the act. Consequently, the right to trial by jury in all *nisi prius* actions (that is, actions triable by judge and jury) other than in actions for personal injury (excepting trespass to the person and false imprisonment) remains unaffected.

Except where captured by section 1 of the 1988 act, the entitlement to jury trial in all common-law causes of action declared and preserved by section 48 of the 1877 act (continued, with minor modification, by section 94 of the *Courts Act 1924* and section 20 of the *Courts Act 1928*) subsists for all such actions commenced in the High Court.

In the interest of completeness, it should be noted that the causes of action excluded by reason of the 1877 and 1924 acts are those for liquidated sums, damages for breach of contract or the enforcement of contract, and for the recovery of land.

The right to jury trial was subsequently conferred by statute in respect of a number of new statutory causes of action (see section 18.3 of the *Air Navigation Act 1936*, inserted by section 4 of the *Air Navigation Act 1965*; part IV of the *Civil Liability Act 1961*; and section 44 of the *Succession Act 1965*.)

The right to jury trial conferred by these provisions in respect of claims for damages for personal injuries was abolished by the 1988 act.

## Exercise of right and abeyance

Notwithstanding the continuing subsistence of the right in all other common-law causes of action for wrongs, the exercise thereof gradually fell into abeyance, except for those causes of action in trespass, malicious prosecution, false imprisonment, and defamation. This may well account for the perception that civil jury trial is confined to a ‘few areas’ (see *Higgins v Irish Aviation Authority* at paragraph 43: ‘One of the few areas in which a plaintiff is entitled to have a jury determine the issues of fact and to assess damages is in defamation actions.’). While factually correct in practice, the position at law is altogether different.

There are a multiplicity of reasons to explain the decline in the use of jury trial in the many causes of action where the entitlement nevertheless subsists. Most significant among these, in a broad sense, are probably the social, political, and economic consequences of the Great War, the War of Independence, the Civil War, the Economic War of the 1930s, and the Second World War, to which may be added perceptions of delay,

## FOCAL POINT CASE LAW AND AUTHORITIES

For a list of the common-law causes of action extant prior to the coming into force of the 1877 act, see *Bullen & Leake & Jacob's Hong Kong Precedents of Pleadings* (third edition, p273). For discussion on the application of section 48 of the 1877 act prior to independence, see *Wylie's Judicature Acts (Ireland) and Rules of the Supreme Court* (1905, pp 528-529), *Secretary of State for War v Studdert* (1902), and *Magill v Magill* (1914).

For a discussion on the application of section 48 of the 1877 act, section 94 of the *Courts Act 1924*, and section 20 of the *Courts Act 1928*, see *Liston v Leinster Bank* (1940), *Higgins v Irish Shipping* (1944), *Cox v Massey* (1969), IR 343 at 245; *McDonald v Galvin* (1976), *Finlay v Murtagh* (1979), *Sheridan v Kelly* (2006), *Bradley v Maher* (2009), *DF v Garda Commissioner* (2015), *Lennon v HSE* (2015), and *Higgins v Irish Aviation Authority* (2016 and 2018).



## THE PROPOSAL, IF ENACTED, REPRESENTS A RADICAL DEPARTURE FROM A LONG-SETTLED PUBLIC POLICY THAT LIES BEHIND THE LEGAL RIGHT OF THE CITIZEN TO JURY TRIAL

expense, and uncertainty – albeit that the latter are features associated with litigation in general.

Whatever the explanation, the contemporary position appears to be either one of a general lack of awareness or a misunderstanding of the extent of the right to jury trial in civil matters, a right that is far broader than one would glean from a perusal of the causes of action generally encountered in the Civil Jury List.

### Implications

The continuing subsistence of the entitlement to jury trial in all common-law causes of action for wrongs (commenced in the High Court) extant at the time of the enactment of the 1877 act (excepting causes of action subsequently abolished) clearly gives rise to a professional duty, particularly on the part of practitioners engaged in litigation, to be in a position to give advice concerning the entitlement to jury trial as of right in any such cause of action, in order to afford the client the opportunity to consider whether or not the right should be exercised.

**T**he entitlement to jury trial in defamation derives a particular significance from the nature of the tort, which is only committed when a defamatory statement concerning a person is published to a person or persons other than the person concerned (the person to whom it is understood the statement refers) – see section 6 of the *Defamation Act 2009*. A statement is defamatory if it tends to injure a person's reputation in the eyes of reasonable members of society (section 2 of the *Defamation Act 2009*).

It is hardly a surprise, therefore, that the Supreme Court has observed that, in

defamation proceedings, the jury is in a unique position with regard to making findings of fact and the assessment of damages. Who better than the representatives of society – the jury – to determine whether the plaintiff's reputation has been injured in the eyes of reasonable members of society and, where so found, to assess the amount of the compensation in respect thereof?

It is not just the ancient legal right of the citizen to trial by jury, but also the concept of the participation of the public in the administration of justice, at which the proposed abolition strikes. These considerations aside, at the very least and if only out of respect for the

Supreme Court, the implementation of the parameters on *quantum* to assist juries set out in *Higgins* ought firstly to be facilitated over a reasonable period in practice before the drastic step of abolition is contemplated.

In the meantime, if further reform beyond guidelines is considered necessary to the achievement of balanced awards and consistency, the simple mechanism of making a jury indicative with final determination of *quantum* left to the trial judge on application of either party to the proceedings would suffice.

---

*Bernard Barton is former head of the Civil Juries Division of the High Court.*

## LOOK IT UP

### CASES:

- *Bradley v Maher* [2009] IEHC 389
- *Cox v Massey* [1969] IR 343
- *DF v Garda Commissioner* [2015] IESC 44
- *Finlay v Murtagh* [1979] IR 249
- *Higgins v Irish Aviation Authority* [2016] IECA 322; [2018] IESC 29; [2022] IESC 13
- *Higgins v Irish Shipping* [1944] 178
- *Lennon v HSE* [2015] IECA 92
- *Liston v Leinster Bank* [1940] IR 77
- *McDonald v Galvin* [1976-1977] ILRM 41
- *Magill v Magill* [1914] 2 IR 533
- *Murphy v Hennessy* [1984] IR 378
- *Secretary of State for War v Studdert* [1902] IR 240 and 38 ILTR
- *Sheridan v Kelly* [2006] IESC 26; 1 IR 314

### LEGISLATION:

- *Air Navigation and Transport Act 1936*
- *Air Navigation and Transport Act 1965*
- *Civil Bill Courts (Ireland Act) 1851*

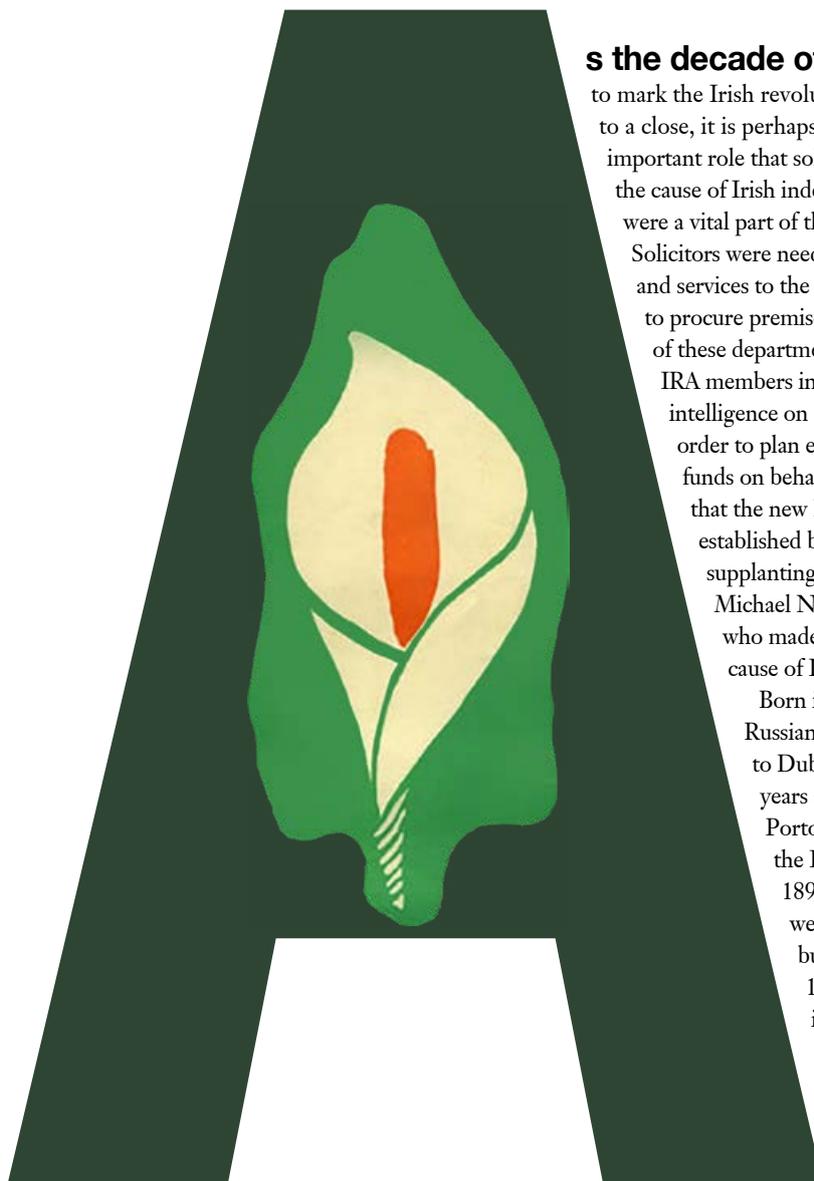
- *Civil Liability Act 1961*
- *Common Law Procedure Acts 1852-1856*
- *Courts Acts 1924, 1928, 1971, 1988*
- *Defamation Act 2009*
- Draft scheme of the *Defamation (Amendment) Bill*
- *Supreme Court of Judicature (Ireland) Act 1877*
- *Succession Act 1965*

### LITERATURE:

- *Berry, Early Statutes of Ireland* (vol 1, 1907)
- *Blackstone, Commentaries on the Common Law* (vol 3, chapter 23, pp379-382)
- *Bullen & Leake & Jacob's Hong Kong Precedents of Pleadings* (third edition, 2013, Sweet & Maxwell)
- *Wylie, Judicature Acts (Ireland) and Rules of the Supreme Court* (1905, pp528-529)

# A REVOLUTIONARY solicitor

During this decade of centenaries marking the Irish revolutionary period, we remember the role that solicitors played in furthering the cause of Irish independence. Dr Barry Whelan looks at the life of Michael Noyk



## **s the decade of centenaries**

to mark the Irish revolutionary period comes to a close, it is perhaps fitting to highlight the important role that solicitors played in furthering the cause of Irish independence. Put simply, they were a vital part of the Republican Movement. Solicitors were needed to provide legal advice and services to the various Dáil departments, to procure premises for the administration of these departments, to represent captured IRA members in British courts, to provide intelligence on the layout of prisons in order to plan escape operations, to solicit funds on behalf of the Dáil, and to ensure that the new Republican court system established by the Dáil succeeded in supplanting the British courts in Ireland. Michael Noyk was one such solicitor who made a vital contribution to the cause of Irish freedom.

Born in Lithuania (then part of the Russian Empire), his family moved to Dublin and resided for many years at 18 Emorville Avenue, Portobello. He was educated in the High School, Rathgar, from 1896-1901, where he scored well in Classics and English, but low in mathematics. In 1911, aged 26 and studying in Trinity College Dublin, his involvement in the Republican Movement began through his friendship with Arthur Griffith.



COURTESY: PIPARAS BEASLAJ COLLECTION, NATIONAL LIBRARY OF IRELAND

Michael Noyk and the Old Dublin Brigade. He is seated second from left

Noyk provided legal advice to Griffith, whose political and journalistic work with Sinn Féin frequently entailed clashes with the British authorities. His circle of Republican contacts widened and he became a firm nationalist, attending talks at No 6 Harcourt Street, Dublin.

### First political case

In 1916, he was asked to represent James Mallin, who had been arrested and charged with larceny. “This was my first appearance in a political case,” he later recalled. He worked as an election agent for Sinn Féin, which began to successfully challenge the Irish Parliamentary Party (IPP) in a succession of by-elections in counties Roscommon, Longford, and Clare.

His legal experience was viewed as

important, and he was also asked to help with administering a prisoners’ dependants’ fund, whose secretary was Michael Collins. The solicitor later remembered his first meeting with Collins: “He was very young, handsome and full of personality, but still I did not think he possessed the depths which he later showed.”

When the War of Independence began on 21 January 1919, the day the Dáil declared a sovereign Irish Republic following a landslide victory for Sinn Féin in the recent general election, Noyk was, from this time on, engaged almost daily in assisting Michael Collins, then Minister for Finance. He secured premises for Collins’s department on 22 and 29 Mary Street, saying: “In order to secure these, and other offices, I had to resort to all kinds of ruses and, in particular, to

appeal to the greed of the various owners, by stating that I would be prepared to pay six or 12 months’ rent, in advance.”

### Fictitious names

He often used fictitious names or secured the permission of supporters who were trusted enough within the movement, yet sufficiently on the periphery, to avoid arousing the attention of the authorities if their names were put on the lease agreements. If he discovered that the owner of a premises was from a unionist or pro-British background, he concocted “a double-barrelled name, like Gwynn-Nicholls or Llewelyn-Davis”, to avoid provoking any suspicion. He made it a practice to then burn any agreements, once signed, to avoid incriminating anybody. In this way, Noyk secured premises for various



## BY A TOUCH OF INSPIRATION, I DECIDED THAT I WOULD TAKE A CONSULTATION ROOM IN THE FOUR COURTS, AND THE COURT WAS SOLEMNLY HELD ON A SATURDAY IN THE PRECINCTS OF THE BRITISH COURTS OF JUSTICE

Dáil departments, including the Home Affairs, Local Government, and Propaganda Departments.

Home Affairs was particularly pertinent, as it became central to the establishment of a Republican court system (consisting of parish, district, circuit and supreme courts) that supplanted the British judicial system in Ireland. Noyk attended these court sessions, mainly in Dublin, but also Republican arbitrations in the country. On one occasion, in Limerick City Hall, the court was raided by enemy forces: “We had only been there a few minutes when we heard the tramp of men and, looking down the bannisters, we saw the black-green uniform of the RIC [Royal Irish Constabulary]. We quickly unloaded our papers and handed them over to an official in the City Hall, who buried them amongst harmless papers.”

Noyk arranged for the highest Dáil court, the Supreme Court, to sit under the noses of the authorities: “By a touch of inspiration,

I decided that I would take a consultation room in the Four Courts, and the court was solemnly held on a Saturday in the precincts of the British Courts of Justice. Seamus O’Connor appeared for O’Shea and I conducted the case personally.”

**I**n time, the Republican courts won over the hearts and minds of the Irish people and showed that the Dáil was not only a firm advocate of democracy, but also of judicial fairness and impartiality.

### Intelligence gathering

Collins’s role in intelligence gathering saw him turn to Noyk for important tasks: “Besides official visits, I used to meet Michael Collins and Frank Thornton [subdirector of IRA intelligence] practically every night in Vaughan’s Hotel.”

In 1920, Collins wanted Noyk to investigate the activities of resident

magistrate Alan Bell, who had been working to freeze Dáil funds held in bank accounts. This money was vital for the operation of the Dáil departments, its staff, and the myriad activities undertaken. “It appeared that Alan Bell had summoned all the bank managers in Dublin and was holding an inquiry in the old Police Courts, and Mick wanted me to get in there and find out what was happening.”

Despite the difficulties of the task, Collins praised Noyk for carrying out his duty. When Bell began to freeze Dáil funds, he was deemed too big a threat and was killed by an IRA unit on 26 March 1920. From this point on, Noyk’s life became “a vision between a gaol, a barracks and a court martial”.

**H**is ability to access British buildings – courts, barracks, prisons – ostensibly to interview clients, also provided excellent cover in learning the layouts of these premises, which Collins then used to plan and coordinate escapes.

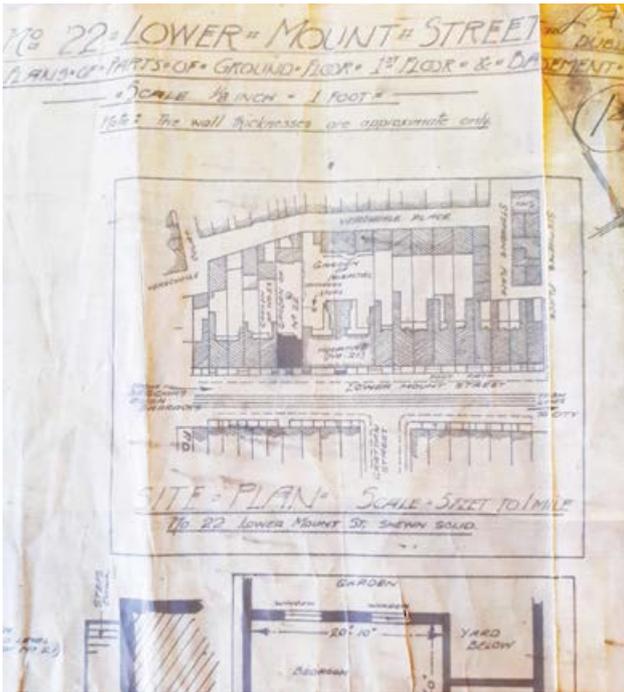
### Bloody Sunday

Operating within the British judicial system, Noyk became one of the principal solicitors acting on behalf of arrested Republican figures. He attended Countess Markievicz’s court martial, sitting in the Royal Barracks (now Collins’s Barracks). In this regard, his work intensified on 21 November 1920 – Bloody Sunday – when Collins’s units killed 12 British intelligence agents. In response, the British established court martials, known as Field General Court Martials, by order of Sir Nevil Macready, general officer commanding in Ireland. Suspects were rounded up and charged with various acts in contravention of the *Restoration of Order in Ireland Regulations*.

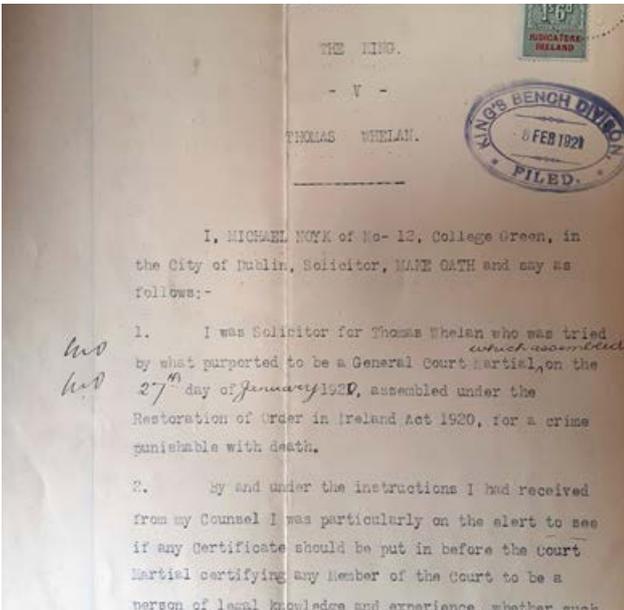
Often given the charge sheet and summary of evidence late by the British authorities, Noyk was tasked with preparing a defence and arranging counsel to challenge the



Team photo from the 1935-36 season taken in front of the main stand at Glenmalure Park, Milltown. Michael Noyk, solicitor for Shamrock Rovers Football club, is seated first row, far right



Survey map of 22 Lower Mount Street – site of one of the killings on Bloody Sunday. The map was used by the IRA to plan the killings of British intelligence agents



The case against Thomas Whelan

**MICHAEL COLLINS WAS VERY YOUNG, HANDSOME AND FULL OF PERSONALITY, BUT STILL I DID NOT THINK HE POSSESSED THE DEPTHS WHICH HE LATER SHOWED**

eyewitnesses for the prosecution who gave evidence, but whose names were not disclosed. To counter the testimony of the prosecution's witnesses, Noyk called defence witnesses who often testified that those accused before the military court were at home or at Mass at the time the killings occurred: "I went to the main body of the church and saw Whelan about halfway up the church kneeling at the right-hand side ... I saw him going up to the altar rails to receive Holy Communion." However, the court frequently dismissed such statements as being a "typical Irish alibi".

### Church-bells trial

Noyk frequently called English witnesses to help appease the court: "I am an Englishman and an old soldier." He also arranged for specialists, such as architects, to give evidence that statements made by the prosecution's witnesses were inaccurate, given the light and positions of windows where the murders took place.

In one celebrated example – the trial of Patrick Moran for the deaths of two intelligence officers, Lieutenant Ames and Lieutenant Bennett, at 38 Upper Mount Street – a prosecution witness claimed he knew the time of the murders because he heard the church bells strike the hour.

Noyk called Francis Tanner, an English sexton who lived in the parochial hall in Northumberland Road: "He stated that not only had his own church clock not chimed for 25 years, but that the only other churches in the vicinity, namely the Roman Catholic Church in Haddington Road and the Protestant Church of Baggot Rath – which is now Baggot Street – had not chimed, as they had no clocks that chimed."

In general, Noyk succeeded in getting acquittals, but given the arbitrary nature of the British courts, many others were not so fortunate: "Once the British had one victim, they were quite content to let the others go."

### Trial of Seán MacEoin

His most noted case was the trial of General Seán MacEoin, the IRA commander in Longford who had led the Ballinalee and Clonfin attacks and who was charged with the murder of RIC District Inspector Thomas McGrath. "Before the trial was listed to come off, I was in constant touch with Mick Collins in Kirwan's public house. When I entered these premises, either Kirwan or his assistant nodded the head either right or left, which would indicate to me in which snug Mick was seated."

MacEoin was sentenced to death by hanging, but was released after the July truce in 1921: "I met MacEoin that night at Vaughan's Hotel, which was the meeting place of Michael Collins and his men, and he gave me a hearty greeting, lifting me bodily and almost throwing me into the air."

After the War of Independence, Noyk would go on to have a prominent career in his legal practice. He had a broad range of interests, from football – he was the solicitor for Shamrock Rovers Football Club – to the restoration of Kilmainham Jail.

When he died in October 1966, the guests at the funeral included President Éamon de Valera and Taoiseach Seán Lemass. The Dublin Brigade of the IRA draped the tricolour over his coffin and carried it through the streets of Dublin to Dolphin's Barn Jewish Cemetery.

*Dr Barry Whelan works in the Law Society's Diploma Centre Examinations Office and is the author of Ireland's Revolutionary Diplomat: A Biography of Leopold Kerney. He wishes to thank Suzanne Crilly (Diploma Centre) for reviewing this article.*

# Bosses must drive accountability culture

The Central Bank's deputy governor has said that firms should take steps now to prepare for the new Senior Executive Accountability Regime. Mary Hallissey reports

THERE WILL BE AN INEVITABLE INCREASE IN THE ADMINISTRATIVE BURDEN ON FIRMS DURING THE INITIAL IMPLEMENTATION PHASE. IT WILL TAKE TIME FOR FIRMS TO CREATE A STATEMENT OF RESPONSIBILITIES, AND PLAN ACCORDINGLY

The forthcoming Individual Accountability Framework (IAF) should see the financial-services industry and its regulatory relationships move up the “maturity curve”, the Central Bank's deputy governor said at a Law Society briefing event on 17 April.

Speaking at the Blackhall Place seminar on the new Senior Executive Accountability Regime (SEAR), Derville Rowland said that the regulator desired a mature industry operating to high standards, which would be good for business, investors, and the economy.

An “immature relationship” of the regulator “coming in with a homework list” was unhelpful and not good for firms or the Central Bank, which wished to encourage businesses to provide good products and services, while making a reasonable profit, she added.

The Central Bank had a globally relevant footprint, overseeing 10,000 entities and over 3,000 firms, Rowland said.

#### Consumer benefit

Welcoming attendees to the session, Law Society President Maura Derivan commented that the Central Bank consultation with solicitor stakeholders on the IAF would ultimately benefit all consumers.

“This is very important, in order to bring forward Ireland as a safe and well-regulated place to do business,” the president added. “Ireland for Law, which promotes Ireland as a forum for legal business, is dependent on clear illumination about regulation.”

Derville Rowland commented that the Individual Accountability Framework, and financial regulation in general, was about supporting positive outcomes and protecting consumers and investors, using the values of fairness, consistency, proportionality and predictability.

The deputy governor urged firms to take steps now to prepare for the new accountability regime, by assessing their governance and ensuring clarity in reporting matters.

#### Not a ‘tick-box’ exercise

“We are not into ‘tick-box’ compliance,” said the Central Bank's head of financial risk and governance policy, Gina Fitzgerald. “We are into effectiveness; we are outcome-focused.” She added that firms should use whatever technology helped to achieve that goal.

“We really do want senior leadership to take ownership of this,” Fitzgerald said, “through

examining processes, training and standards. We want to drive culture and governance from the top.”

The regulators warned that a culture of accountability must come from the top of financial-services firms – and not be delegated to human resources or the ‘chief people officer’. “I dislike hearing that culture is the responsibility of HR ... I think it is a senior-role responsibility; it is an absolute drive from the top,” Rowland commented.

The Central Bank is seeking insights from as wide a group of interested stakeholders – including legal-service providers – as possible, before the framework comes into play. Feedback statements will be published and an appropriate transitional period will be allowed for firms to make arrangements, with the framework operational from July 2024.

The framework will impose accountability obligations on relevant senior executives who have decision-making roles in their businesses. The framework also deals with business-conduct standards that enhance the current fitness and probity regime (and address some of its limitations), as well as enhanced enforcement of breaches.



Deputy governor of the Central Bank, Derville Rowland



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“If we get this right, in a proportionate and high-quality manner, it will support Irish business to further fulfil the role of a trusted provider here and abroad, act as a protection to consumers and investors and, ultimately, as a kitemark of quality for this jurisdiction,” Rowland continued, adding that the benefits of the new regime would outweigh the costs: “There will be an inevitable increase in the administrative burden on firms during the initial implementation phase. It will take time for firms to create a statement of responsibilities, and plan accordingly.”

Individuals would have to be notified and trained about conduct standards in the new way of doing business.

### Benefits apparent

“Best practice provides a new and significant regulatory burden; we acknowledge that this is the case,” Rowland stated, adding that all of this would be reviewed after the initial period of operation.

“As firms become more familiar with the regime, we think that the administrative burden will recede and the benefits will become more apparent,” she said.

Credit institutions – excluding credit unions, certain insurance undertakers, investment firms, and incoming third-country branches of these firms – will all be affected.

“It is our intention to increase the scope classification of SEAR over time, with lessons from the initial roll-out to be incorporated as we go on, to form our view,” the deputy governor said. Those not within the initial scope would be well-advised to consider early adoption, she stated.

For consistency and coherence, the framework roles will align with existing fitness



and probity roles. Thus, firms would not be required to create new roles, and SEAR would not alter the existing governance of well-run firms, she explained.

### Two chief responsibilities

Two main types of responsibilities are imposed – ‘inherent’ and ‘prescribed’ – with the latter allocated to individuals who have ‘pre-approval controlled functions’.

The Central Bank had no intention of being overly prescriptive in this allocation, Rowland said, and the standards and obligations imposed would be readily understood. “That approach will allow the firm itself to determine

its own best way to allocate those responsibilities in a manner that will accommodate its own business model and organisational structure, in line with its own governance,” she said.

If firms took ownership of the framework, there would be a permanent uplift in governance standards, she stated. Proper embedding should result in fewer serious issues and less enforcement.

“We use our enforcement powers sparingly, but we do take action where it is warranted,” the deputy governor concluded. 

*Mary Hallissey is a journalist at the Law Society Gazette.*

FOR CONSISTENCY AND COHERENCE, THE FRAMEWORK ROLES WILL ALIGN WITH EXISTING FITNESS AND PROBITY ROLES. THUS, FIRMS WOULD NOT BE REQUIRED TO CREATE NEW ROLES, AND SEAR WOULD NOT ALTER THE EXISTING GOVERNANCE OF WELL-RUN FIRMS

# Standing out from the crowd

Peggy Hughes from Mason Hayes Curran speaks about her life-changing experience of undergoing surgery to remove a brain tumour – and how it has altered her entire outlook on disability

IT IS ESSENTIAL TO HAVE A DISABILITY CHAMPION WITHIN THE RANKS WHO HAS A GENUINE PASSION FOR THE ISSUES AND WHOSE FOCUS IS TO ACTIVELY PURSUE A PROGRAMME OF DISABILITY INCLUSION

I joined Mason Hayes & Curran (MHC) in October 2011 as a partner specialising in pensions law. I set about building my practice, and did so with the privilege of good health in a world that was designed for me.

That changed somewhat when I was diagnosed with a brain tumour and underwent surgery in 2015 to have it removed. I then set off on a voyage of recovery and discovery. Very soon, I realised that I was experiencing neurological issues, including significant energy, light, and sound sensitivities, which I didn't have prior to my brain surgery. My consultant explained that, in order to remove my tumour, he essentially had to inflict a massive brain injury upon me, and that the issues I was experiencing were entirely consistent with that type of brain injury.

As a former nurse, this was the point at which I recognised the reality of my situation and that it would probably be life changing. And it has been. I now essentially have acquired neurodiversity following that surgery – not that anyone needs a label – but sometimes it helps others to understand

better. I now know what it is like to navigate a world that is not always designed for, or sympathetic to, my challenges, but I have learned to adapt. That is what people with disabilities or challenges do every day and, in the overall scheme of things, my challenges are not as great as many others. I have, more recently, also been through a cancer diagnosis and successful treatment. And, happily, life goes on.

MHC has been a huge support to me throughout all of this, working with me to accommodate my particular needs and challenges. I enjoy my work, and it has been really important to be able to continue to work. Thankfully, I have always enjoyed a challenge, though I could not have anticipated this particular journey!

## Invisible disabilities

Not all disabilities are visible, and not everyone with a disability is comfortable discussing or disclosing it. In fact, in an ideal and fully inclusive world, nobody should have to declare or disclose a disability. Very few people enjoy putting their hand up to stand out from the crowd and ask for help. Cultivating

a culture of greater openness and an environment in which everyone feels valued, safe, and comfortable to speak about their needs is vital to ensuring inclusion.

To this end, I believe that it is essential that more people in senior roles within organisations come forward to support disability equality more publicly and, where possible, speak more openly about their own challenges to help normalise disability/diversity. That is what leadership is about – and it is not easy. However, knowing that it is the right thing to do may forge an easier path for others (and also have a positive impact on business) and makes it worthwhile.

## Taking the leap

I am a member of the Diversity Committee in MHC, where my personal focus is disability access and inclusion, and I am also a member of the committee of the [disAbility Legal Network](#). I am fully committed to contributing to these conversations. I truly understand that it takes courage to start or even participate in the conversation.

I was in no hurry to take the leap myself when initially approached by the disAbility



IT IS WORTH REMEMBERING, THOUGH, THAT THE REAL EXPERTS ARE PEOPLE WITH DISABILITY THEMSELVES. THEY ARE GENERALLY ONLY TOO HAPPY TO SHARE THEIR THOUGHTS ON HOW BEST TO ENSURE THEIR INCLUSION AT WORK AND IN LIFE GENERALLY



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Legal Network. However, I have found great support and encouragement. I hope that my openness will help. I would encourage other senior professionals with similar experiences to mine, and who haven't already done so, to consider starting or joining the conversation within their own organisations. From the response I have seen to the disAbility Legal Network, I know there is a need and huge appetite for more openness and understanding on this issue.

### Champion in the ranks

Professional service providers like lawyers are, of necessity, generally focused on driving the business. That involves a lot of juggling of competing interests and demands by people who are already very busy. To ensure that disability access and inclusion gets the focus needed within any organisation, I personally think it is essential to have a disability champion within the ranks who has a genuine passion for the issues and whose focus is to actively pursue a programme of disability inclusion – whether that be as part of a diversity committee or separately. It is only by giving it such close attention that it will achieve the necessary level of prominence within the business.

We do this in many other areas of our business, so disability inclusion is no different and, when you consider that people living with disabilities comprise the largest minority group on this planet, there is both a massive ethical and business case for making an increased impact in this area. To do otherwise potentially excludes a valuable section of our society, which includes our colleagues and clients. In fact, given the increasing focus on 'environmental, social and governance' (ESG) within



business, it always helps to remember that disability access and inclusion fall squarely within the 'social' pillar of ESG, and businesses must increasingly account for their performance under all pillars of ESG.

### Creating ripples

UN statistics tell us that about 15% of the global population lives with disability and, in countries where life expectancy is over 70 years, everyone can expect to live about eight years of their life with some form of disability or accessibility need. So disability access and inclusion concerns all of us. It is understandable sometimes to think that anything I do as an individual is only a drop in the ocean given the potential scale of need. However, even a small drop of water creates ripples and has an impact beyond itself, so we can all make a difference.

Some people reading this article may feel unsure about how to make a difference in this area, including those in leadership positions. That is okay – I have felt the same in the past and I am still learning all the time. If this is you, I would encourage you to challenge yourself and your colleagues to consider and act on how you can make a contribution to disability access

and inclusion within your own lives and within your own organisations. Undoubtedly, there has been progress over the years, but there is still a lot to do. It is as important as ever to take some action towards making progress. In fact, I would go so far as to say that 'progress' is the game changer. It is easy to fail to progress on disability inclusion while waiting for some perceived perfect solution or approach. Sometimes we simply don't know where to start.

### Becoming an ally

There are many organisations who are experts in this area and are happy to help businesses on this journey. It is worth remembering, though, that the real experts are people with disability themselves. They are generally only too happy to share their thoughts on how best to ensure their inclusion at work and in life generally. Often they just need someone to listen to them.

The disAbility Legal Network has produced a useful information leaflet, which can be found on its website. Perhaps accessing that leaflet or even signing up to become an ally of the network can be your starting point on this journey. For more information on the disAbility Legal Network, visit [www.disabilitylegalnetwork.ie](http://www.disabilitylegalnetwork.ie).

I hope you can start or join the conversation in your own organisation, because we can all make a difference. So the call to action is that there is no time like the present to do something and, above all else, 'let's not sacrifice progress in the pursuit of perfection'. 

*Peggy Hughes is a partner at Mason Hayes & Curran LLP, a member of the firm's Diversity Committee, and a member of the disAbility Legal Network.*

AS A FORMER NURSE, THIS WAS THE POINT AT WHICH I RECOGNISED THE REALITY OF MY SITUATION AND THAT IT WOULD PROBABLY BE LIFE CHANGING. AND IT HAS BEEN. I NOW ESSENTIALLY HAVE ACQUIRED NEURODIVERSITY FOLLOWING THAT SURGERY – NOT THAT ANYONE NEEDS A LABEL – BUT SOMETIMES IT HELPS OTHERS TO UNDERSTAND BETTER

# Who's been checking your **data**?

Everyone has the right to know to whom their personal data has been disclosed. Duncan Grehan assesses the impact of a recent judgment on access to data

A recent EU Court of Justice judgment raises challenging and numerous issues about access to data in Ireland's public registers and whether 'personal data' includes data on third-party queries about the immovable and moveable property of the owner.

The official press release issued just after the 12 January ruling in *Case C-154/21, RW v Österreichische Post AG* states: "In today's judgment, the court replies that, where personal data have been or will be disclosed to recipients, there is an obligation on the part of the controller to provide the data subject, on request, with the actual identity of those recipients. It is only where it is not (yet) possible to identify those recipients that the controller may indicate only the categories of recipient in question. That is also the case where the controller demonstrates that the request is manifestly unfounded or excessive. The court points out that the data subject's right of access is necessary to enable the data subject to exercise other rights conferred by the GDPR, namely his or her right to rectification, right to erasure ('right to be forgotten'), right to restriction of processing, right to object to processing, or right



PIC: SHUTTERSTOCK

ONE CANNOT FIND OUT WHO HAS SEARCHED, WHEN THE SEARCH WAS MADE, AND FOR WHAT WAS SEARCHED

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

of action where he or she suffers damage."

The ruling raises a number of issues.

First, what right to access the identity details about searches and searchers – or, at least, categories of searches – in the Land Register is available? Will one be given details of all searches made about one's real estate, irrespective of whether "the request is manifestly unfounded or excessive"?

The official website of the Property Registration Authority ([Landdirect.ie](http://Landdirect.ie)) provides no such access, nor a statement that it is available as of right, nor any

reason why it is unavailable.

So one cannot find out who has searched, when the search was made, and for what was searched.

Second, what similar classes of detail are stated by the registers' portals as available as of right on request from all statutory registers, such as from the registers of the Companies Registration Office ([www.cro.ie](http://www.cro.ie)) or of the Intellectual Property Office of Ireland ([www.ipoi.gov.ie](http://www.ipoi.gov.ie))? 

*Duncan Grehan is a member of the EU and International Affairs Committee.*

# One-nil at half-time

The Advocate General has ruled against the European Super League in a case that involves fundamental questions for the organisational structure of soccer in Europe. Cormac Little throws it in

THE AG NOTED THAT THE FIFA/UEFA REFUSAL TO APPROVE THE ESL, ON THE BASIS THAT IT UNDERMINES THE LEGITIMATE SPORTING OBJECTIVES OF THESE BODIES, DOES NOT INFRINGE ARTICLE 102 TFEU



PICTALAMY

In an opinion dated 15 December last, Advocate General Rantos delivered his recommendations to the CJEU regarding *European Superleague Company SL (ESLC) v UEFA and FIFA (Case 333/21)*, which involved fundamental questions for the organisational structure of soccer in Europe.

In early 2021, the soccer world was rocked by the announcement of the proposed European Super League (ESL). This tournament was planned to be contested by 20 of Europe's top clubs, with the dozen founding members guaranteed participation, irrespective of their performances on the pitch.

In response, FIFA and UEFA emphasised that they would refuse to authorise the ESL, while warning that any club or footballer playing in such a league would be excluded from participating in any of their tournaments. Under their respective statutes, these bodies have given themselves the exclusive power to both approve international club football tournaments in Europe and to punish teams and players participating in such unauthorised competitions.

The vociferous public opposition to the ESL quickly led to nine founder members renouncing their planned

participation. However, focus soon turned to the case lodged by ESLC (the company seeking to manage and promote the ESL) with the Madrid Commercial Court, claiming that FIFA/UEFA's actions infringed EU law. In April 2021, the Madrid court referred various questions to the CJEU for preliminary ruling under article 267 of the *Treaty on the Functioning of the EU* (TFEU).

### EU competition rules

Article 101 TFEU generally prohibits arrangements between undertakings, decisions by associations, and concerted practices that have the object or effect of restricting competition

IN ORDER NOT TO FALL FOUL OF EU COMPETITION RULES, ANY REFUSAL TO APPROVE SPORTING COMPETITIONS ORGANISED BY THIRD PARTIES MUST BOTH BE CIRCUMSCRIBED AND ALSO JUSTIFIED BY LEGITIMATE GOALS, WHILE BEING PROPORTIONATE TO THOSE SAME OBJECTIVES

while affecting trade between EU member states. However, restrictive arrangements may be exempted where their overall effect is to promote competition. Separately, article 102 TFEU prevents the abuse of a dominant position in the EU (or in a substantial part of it). Dominance is not illegal *per se*, but dominant undertakings are under a special responsibility not to prevent the development of genuine undistorted competition in the single market. However, a dominant undertaking may argue that its behaviour is objectively justified.

### Special position of sport

The special position of sport is enshrined in article 165 TFEU, which gives ‘constitutional recognition’ to the ‘European sports model’ (ESM), which is based on a pyramid structure, open competition, and financial solidarity. While sport, like other economic activities, is subject to EU competition rules, its specific nature (such as its social and educational aspects) may be relevant for the purposes of analysing any objective justification for any restrictions imposed by a governing body. Indeed, such bodies often have an inherent conflict of interest, in that they hold regulatory power (such as the right to designate particular tournaments) while exercising a commercial activity (that is, promoting similar events themselves). Therefore, in order not to fall foul of EU competition rules, any refusal to approve sporting competitions organised by third parties must both be circumscribed and also justified by legitimate goals, while being proportionate to those same objectives.

### Articles 101 and 102

Addressing the issue of whether the rules of prior approval constitute an object

breach of article 101, the AG stated that the ESL was not a ‘breakaway’ league, because the participating clubs wished to remain affiliated to UEFA. Measures that seek to combat ‘dual membership’ do not have the objective of restricting competition, because they do nothing to prevent the establishment of a soccer tournament outside of FIFA/UEFA’s remit.

Turning to the effects analysis, the AG stipulated that the FIFA/UEFA prior approval and disciplinary rules fall outside article 101 TFEU if they enable the relevant objectives to be achieved in a proportionate manner. He referred to the doctrine of ‘sports ancillary restraints’, where non-commercial aims such as those enshrined in article 165 TFEU are relevant to the analysis.

The AG noted that FIFA/UEFA’s actions are inherent to the pursuit of the legitimate objective of ensuring open competition among other ‘pillars’ of the ESM. Indeed, UEFA cannot be criticised for protecting its commercial interests, given that the ESL would be a rival competition in the most lucrative segment of the market for the organisation of football tournaments in Europe.

However, for the relevant FIFA/UEFA rules to fall outside article 101 TFEU, they must be proportionate. In this regard, the AG recommended that this question be decided by the Madrid court. That said, he did note that imposing sanctions on footballers and/or depriving national teams of such players seems disproportionate.

The AG acknowledged that UEFA holds a dominant, if not monopoly, position within the meaning of article 102 TFEU in the market for the

organisation and commercial exploitation of international competitions between soccer clubs in Europe, since it is the sole organiser of such tournaments. Referring to the special responsibility of dominant undertakings, UEFA should not, when examining requests for the approval of new competitions, unduly deny access of third parties to this market. The AG stipulated that the doctrine of ‘essential facilities’ did not apply, since any refusal by FIFA/UEFA to approve the ESL did not prevent the relevant clubs from ‘breaking free’ and establishing their own competition outside of the ecosystem of these governing bodies. Accordingly, the AG noted that the FIFA/UEFA refusal to approve the ESL, on the basis that it undermines the legitimate sporting objectives of these bodies, does not infringe article 102 TFEU. Similarly, the threat of sanctions against ESL clubs also falls outside EU rules on abusive behaviour. That said, disciplinary measures targeting players, as regards them playing for their country, are, the AG recommended, disproportionate.

### Next steps

Clearly, the AG’s opinion represents good news for FIFA/UEFA. While such rulings are not binding on the CJEU, this court typically follows them around 80% of the time. However, it remains to be seen whether the Spanish court will, in due course, view either the approval system or planned disciplinary measures as proportionate. 

*Cormac Little SC is head of the Competition and Regulation Department at William Fry LLP and is a member of the Law Society’s EU and International Affairs Committee.*

## PRACTICE NOTE

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.  
NO RESPONSIBILITY IS ACCEPTED FOR ANY ERRORS OR OMISSIONS, HOWSOEVER ARISING

### PARTNERS IN SOLICITOR FIRMS

● Practitioners should be aware that, for regulatory purposes, the Law Society does not differentiate between an equity partner and a salaried partner in a solicitor firm. All solicitors in a solicitor firm who hold

themselves out as a partner or use the title of partner (whether equity or salaried) have joint and several liability for the firm and the regulatory responsibilities and obligations of a partner. Any salaried partner should

be aware that they shall be treated as a full regulatory partner by the Society. 

*Niall Connors, Registrar of Solicitors and director of regulation.*

## GUIDANCE NOTES

LITIGATION COMMITTEE

### SWORN AFFIDAVITS AND IDENTIFICATION OF DEPONENT

● Practitioners should note that the jurat of any affidavit sworn should contain wording that specifically states that the document the solicitor relied upon to identify the deponent

contained a photograph of the deponent.

The Central Office may refuse to file affidavits that do not comply with this requirement.

The Courts Service website has updated its precedent affidavit, and a copy of it can be found at [www.courts.ie/content/most-common-forms](http://www.courts.ie/content/most-common-forms).

LITIGATION COMMITTEE

### DUBLIN CIVIL COMBINED OFFICES – APPOINTMENT BOOKING

● On Monday 3 April 2023, the Dublin Civil Combined Offices introduced an appointment booking service (see [www.courts.ie/appointments](http://www.courts.ie/appointments)).

The Dublin Civil Combined Offices are located at Áras Uí Dhálaigh, Inns Quay, Dublin 7. This group of offices includes the following offices at that location:

- Stamp Office,
- District Civil Office,
- Circuit Civil Office,
- Licensing and Small Claims Office,
- Judgments Office.

From 3 April 2023, an appointment must be scheduled in advance of visiting the above offices for:

- Stamping papers with relevant stamp duty in advance of filing documents in any of the court offices,
- Filing documents for the Dublin District and Circuit Civil Courts,
- Making applications to the Dublin District and Circuit Civil Courts,
- Queries relating to the Dublin District and Circuit Civil Courts,
- Collecting further copies of attested court

orders/pleadings from file,

- Queries and filings to the Judgments Section (District and Circuit).

For those without access to email or online services, they can phone the relevant office to make an appointment:

- Stamp Office – 01 945 6810,
- District Civil Office – 01 945 6809,
- Circuit Civil Office – 01 945 6810,
- Licensing and Small Claims Office – 01 888 6381 (licensing) or 01 888 6940 (small claims),
- Judgments Office – 01 888 6879. 

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## SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

● **In the matter of Gerard O'Reilly, a solicitor formerly practising as Gerard O'Reilly & Co, Solicitors, Mylerstown, Clonmel, Co Tipperary, and in the matter of the *Solicitors Acts 1954-2015* [2020/DT06 and High Court record 2022/60 SA]**

*Law Society of Ireland (applicant)*

*Gerard O'Reilly (respondent solicitor)*

On 24 March 2022, the tribunal found the respondent solicitor guilty of misconduct, in that he:

- 1) Caused or permitted a deficit of €4,934.12 on his client account as at 30 April 2018, caused by the existence of four client ledger account debit balances totalling €4,795.47 and allowing bank charges of €115.93 and a negative unexplained difference of €22.72 in his client account, contrary to regulation 7(2) of the *Solicitors Accounts Regulations 2014*,
- 2) Caused or permitted an additional estimated deficit in the probate client ledger account of a named client in the sum of €12,177 as of November 2018, as he wrote client account cheques payable to the office account and posted these to the probate ledger account under the guise of fees that appeared excessive, having regard to the size of the estate, and were not agreed with the sole surviving named executor, in breach of regulation 7(1)(a) of the *Solicitors Accounts Regulations*,
- 3) Caused or permitted an additional deficit of €1,718 in the client matter of named clients due to the respondent solicitor taking additional funds from the residue of the sale of their property in September 2018, despite the sale completing in 2015 and the respondent solicitor taking his agreed conveyancing fee in January 2016, in breach of regulation 7(1)(a) of the *Solicitors Accounts Regulations*,
- 4) Caused or permitted an additional deficit of €7,356.60 on his client account as of May 2019 by writing a series of 11 client account cheques made payable to the respondent solicitor's office account, and which were not posted or debited to any related client account ledger account and no fee notes were raised on foot of these payments, in breach of regulation 7(1)(a)

of the *Solicitors Accounts Regulations*, and

- 5) Failed to keep proper books of account with such relevant supporting documentation as would enable clients' moneys handled and dealt with by the respondent solicitor to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched, in breach of regulation 13 of the *Solicitors Accounts Regulations*.

The matter came before the High Court on 20 June 2022 and the High Court, on receipt of various undertakings from the respondent solicitor, ordered:

- 1) That the respondent solicitor not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
- 2) That the respondent solicitor pay a sum of €2,944 as a contribution towards the costs of the applicant in the tribunal proceedings,
- 3) That the respondent solicitor pay a sum of €1,791.50 as the measured costs of the applicant before the High Court.

**In the matter of Gail Enright, a solicitor formerly practising in Michael Enright & Co, Solicitors, 28 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT85 and High Court record 2022/198SA]**

*Law Society of Ireland (applicant)*

*Gail Enright (respondent solicitor)*

On 8 June 2022, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct, in that she:

- 1) Dishonestly caused or improperly allowed deficits on the client account by transfers of client moneys to the office account, including:
  - a) An improper transfer of €6,949 from the client account to the office account on 1 May 2015 as fees and VAT for a named account, when there were no funds received into the client account in respect of this transaction,

- b) An improper transfer on 25 May 2015 of the amount of €4,205 as fees and VAT, when there were no funds in the client account in respect of this transaction,
- c) An improper transfer on 4 April 2016 of €18,450 from the client account to the office account as fees and VAT for a named account, when there were no funds in the client account in respect of this transaction,
- d) An improper transfer on 3 October 2016 in the amount of €19,272 from the client account to the office account as fees and VAT for a named account, when there were no funds received into the client account in respect of this transaction, and
- e) Improper transfers between October 2015 and August 2016 totalling €35,545 from a contract deposit received from a named party, and
- 2) Attempted to conceal or permitted the attempt to conceal any and/or all of the deficits at allegation (1) above by rectifying deficits in or around account reporting date(s),
- 3) Dishonestly caused and/or improperly allowed transfers from the estate of a named party, giving rise to a deficit of client funds, including:
  - a) Transfer on 1/5/2015 of €12,300, and/or
  - b) Transfer on 2/6/2015 of €9,225, and/or
  - c) Transfer on 12/6/2015 of €6,150, and/or
  - d) Transfer on 2/11/2015 of €6,765, and/or
  - e) Transfer on 4/11/2015 of €10,455, and/or
  - f) Transfer on 9/11/2015 of €6,150, and/or
  - g) Transfer on 16/11/2015 of €5,535, and/or
  - h) Transfer on 16/12/2016 of €6,765, and/or
  - i) Transfer on 23/5/2016 of €18,450,
 Total: €81,795.
- 4) Attempted to conceal deficits on a named estate by creating or causing to be created false copies of a letter of 9 December 2013 addressed to the beneficiaries, containing a fee estimate of €85,000, plus VAT, for the named estate,
- 5) Dishonestly caused and/or improperly allowed the taking of fees from a contract deposit of €44,426 received on 1 October

2015 in respect of the purchase of a commercial property by a named client:

- a) 1/10/2015 – €4,059, and/or
- b) 14/10/2015 – €1,968, and/or
- c) 14/10/2015 – €2,429, and/or
- d) 14/10/2015 – €799, and/or
- e) 11/12/2015 – €9,840, and/or
- f) 14/12/2015 – €1,180, and/or
- g) 21/12/2015 – €2,460, and/or
- h) 16/5/2016 – €6,765, and/or
- i) 2/6/2016 – €6,150,

Total: €35,650.

- 6) Dishonestly caused and/or improperly allowed transfers from a named estate, giving rise to a deficit of client funds of in or around €30,000,
- 7) Caused or permitted serious breaches of the *Solicitors Accounts Regulations 2014*:
  - a) Breach of regulation 7, whereby funds were transferred from the client account to the office account as professional fees, which were not properly available to be applied in satisfaction of professional fees,
  - b) Breach of regulation 7, in that debit balances were allowed to arise on individual client ledgers,
  - c) Breach of regulation 8, in that withdrawals were effected from the client account to the office account, not in accordance with regulation 7,
  - d) Breach of regulation 11, by reason of failure to furnish bills of costs in respect of the funds transferred from the client account to the office account,

- e) Breach of regulation 11, arising from the withdrawal of money from the client account as provided for in regulation 8(2) in respect of professional fees or outlays not properly payable to the solicitors at the time of such withdrawal,
- f) Breach of regulation 12, in that the solicitor failed to maintain books of account that showed the true financial position in relation to the solicitor's transactions with clients' moneys.

The matter came before the High Court and, on 21 November 2022, the High Court ordered that:

- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay a contribution in the sum of €5,000 to the applicant towards its costs and outlay for the Solicitors Disciplinary Tribunal proceedings, by way of four yearly instalments of €1,250,
- 3) The respondent solicitor pay the applicant its measured costs and outlay of the within application in the sum of €6,000, by way of four yearly instalments of €1,500.

**In the matter of Michael Malone, a solicitor practising as Michael Malone & Co, Solicitors, 8A Blarney Shopping Centre, Blarney, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [2021/DT07]**

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

On 2 March 2023, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that he:

- 1) Failed to comply with an undertaking furnished to a named bank on 31 August 2015 on behalf of his named clients and property in Cork City in a timely manner or at all,
- 2) Failed to comply with a direction of the Complaints and Client Relations Committee, made at its meeting on 11 February 2021 and communicated to him by letter dated 12 February 2021, that he provide certain documentation to the Society,
- 3) Failed to respond to the following letters from the Society in a timely matter or at all: letters dated 15 May 2019, 7 June 2019, 26 June 2019, 22 October 2019, 12 November 2019, 7 April 2020 (incorrectly dated 24 March 2020), 5 May 2020, 9 October 2020, 12 February 2021, 9 March 2021, 23 April 2021, 27 May 2021, 10 June 2021, and 28 June 2021.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €3,000 to the compensation fund,
- 3) Pay the sum of €2,712 as a contribution towards the whole of the costs of the applicant or of any person appearing before the tribunal, as taxed by a taxing master of the High Court in default of agreement. 

## Department of Education - ex gratia scheme for the implementation of the ECtHR judgment in O'Keeffe v Ireland **remains open until July 2023**

The Minister for Education, Norma Foley, TD, announced in July 2021 that the Government had approved the reopening of an ex gratia scheme implementing the European Court of Human Rights (ECtHR) judgment in O'Keeffe v Ireland.

The ex gratia scheme was first opened in 2015 following the ECtHR judgment in respect of the case taken by Ms Louise O'Keeffe against the State. The scheme was put in place to provide those who had instituted legal proceedings against the State in respect of day school sexual abuse,

and subsequently discontinued those proceedings following rulings in the High Court and Supreme Court, and prior to the ECtHR judgment, with an opportunity to apply for an ex gratia payment.

To be eligible to apply for the revised scheme, an individual must demonstrate that they come within the parameters of the ECtHR judgment. In particular, they must meet the following criteria:

- they must have issued legal proceedings against the State by 1 July 2021 seeking damages for childhood sexual abuse in a recognised day school;

- have been sexually abused while a pupil at a recognised day school with this abuse occurring before November 1991 in respect of a primary school, or before June 1992 in respect of a post-primary school, and;
- that, had the Department of Education's Guidelines for Procedures for Dealing with Allegations or Suspicions of Child Sexual Abuse (November 1991/June 1992) been in place at the time the sexual abuse occurred, there would have been a real prospect of altering the outcome or mitigating the harm suffered as a result.

**The scheme will remain open for applications until 20 July 2023.**

Details of the revised scheme are available on: <https://www.gov.ie/en/service/90a42-revised-ex-gratia-scheme/>

DATE	EVENT	CPD HOURS	FEE	DISCOUNTED FEE*
<b>IN-PERSON CPD CLUSTERS 2023</b>				
25 May	<b>Essential Solicitors' Update</b> , Carrick-on-Shannon, Leitrim			€150
1 June	<b>Essential Solicitors' Update</b> , The Strand Hotel, Limerick			€150
8 June	<b>North West General Practice Update</b> , Lough Eske Castle Hotel, Donegal			€150
14 Sept	<b>Essential Solicitor Update Kerry</b> , Ballygarry House Hotel, Tralee, Kerry			€150
<b>IN-PERSON AND LIVE ONLINE</b>				
10 May	<b>Assertiveness &amp; Dealing with Difficult Work Situations</b> Law Society of Ireland	3 Management & Professional Development Skills (by Group Study)	€176	€150
10 May	<b>In-House and Public Sector Panel Discussion 2023</b> Law Society of Ireland	2.5 Management & Professional Development Skills (by Group Study)	€65	
7 June	<b>Human Rights &amp; Equality Committee Lecture 2023</b> Online via Zoom Webinars	1 General (by eLearning)	Complimentary	
8 June	<b>Probate Update - Tips for Solicitors Drafting Wills &amp; Taking Instructions</b> Online via Zoom Webinars	1 General (by eLearning)	€65	
<b>ONLINE, ON-DEMAND</b>				
Available now	<b>Legaltech Talks Hub</b>	See website for details		Complimentary
Available now	<b>Effective Advocacy for Young People</b>	See LegalED Talks CPD Training Hub		Complimentary
Available now	<b>Suite of Social Media and Website courses</b>	Up to 4 Management & Professional Development Skills (by eLearning)	€175	€150
Available now	<b>Plain English for Lawyers</b>	See LegalED Talks CPD Training Hub		Complimentary
Available now	<b>Proposed Solicitors Accounts Regulations</b>	See LegalED Talks CPD Training Hub		Complimentary
Available now	<b>Legislative Drafting Masterclass</b>	3 General (by eLearning)	€280	€230
Available now	<b>New Laws Applicable to Technology Use and Creation Conference</b>	2.5 General (by eLearning)	€198	€175
Available now	<b>Property Law Update 2022</b>	3.5 General (by eLearning)	€198	€175
Available now	<b>Employment Law Masterclass: New Developments 2022</b>	6 Hours General (by eLearning)	€280	€230
Available now	<b>International Arbitration in Ireland Hub – suite of Courses</b>	See website for details	€125	€110
Available now	<b>GDPR in Action: Data Security and Breaches</b>	1 Regulatory Matters (by eLearning)	€125	€110
Available now	<b>Construction Law Masterclass: The Fundamentals</b>	10 General (by eLearning)	€470	€385
Available now	<b>Pre-Contract Investigation of Title</b>	3 General (by eLearning)	€125	€110
Available now	<b>Safety, Health &amp; Welfare at Work Masterclass</b>	See website for details		Complimentary
Available now	<b>LegalED Talks CPD Training Hub</b>	See website for details		Complimentary

**WILLS**

**Mathews, Carmel (deceased)**, late of 8 The Lawn, Wood Park, Ballinteer, Dublin 16, who died on 27 November 2021. Would any firm having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in contact with the deceased regarding her will, please contact McGrath Mullan LLP Solicitors, Suite 323 The Capel Buildings, Mary's Abbey, Dublin 7; tel: 01 873 5012, email: [info@mcgrathmcgrane.ie](mailto:info@mcgrathmcgrane.ie)

**Murphy, Thomas Oliver (otherwise Thomas, also known as TO Murphy and Oliver Murphy) (deceased)**, late of Barnhill House, Termonfeckin, Drogheda, Co Louth A92 EW 25 (otherwise Slate Row, Termonfeckin, Co Louth), who died on 4 May 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Branigan & Matthews, Solicitors, 33 Laurence Street, Drogheda, Co Louth; DX 23002; tel: 041 983 8726, email: [estella@branmatt.ie](mailto:estella@branmatt.ie)

**Walsh, Mary Ellen (deceased)**, late of Tombreane, Carnew, Co Wicklow, and latterly of Signa-Care Bunclody, Newtownbarry, Bunclody, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 6 March 2023, please contact Cooke & Kinsella, Solicitors, Wexford Road, Arklow, Co Wicklow; tel: 0402 32928, 40012, fax: 0402 32272, email: [fergus@cookekinsella.ie](mailto:fergus@cookekinsella.ie)

**TITLE DEEDS**

**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 and in the matter of an application by Claregrove Developments Limited**  
Any person having a freehold estate or any intermediate interest in all that and those "that part of the lands of Newtown containing approximately six acres

**RATES**

## PROFESSIONAL NOTICE RATES

**RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

- **Wills** – €163 (incl VAT at 23%)
- **Title deeds** – €325 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €163 (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](mailto: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 June 2023 Gazette: 17 May 2023.**

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*.

statute, situate at Raheny in the barony of Coolock and county of Dublin, and which said plot of ground is more particularly delineated on the map hereto attached and thereon edged red", the subject of a lease dated 21 November 1947 between Esther Mary Hopley of the one part and Margaret Byrne of the other part for a term of 999 years from 1 January 1947 at a rent of £6 per annum, portion of which being situate at Clarehall, Malahide Road, Dublin 17, is currently held by Claregrove Developments Limited as lessee under the said lease.

Take notice that Claregrove Developments Limited intends to apply to the county registrar of the county of Dublin to vest in it the fee simple and any intermediate interests in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Claregrove Developments Limited intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be appropriate on the basis that the person

or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.

*Date: 5 May 2023*

*Signed: Ogier Leman LLP (solicitors for the applicants), 8 Percy Exchange, Percy Place, Ballsbridge, Dublin 4*

**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 Camus General Practice Limited**

Take notice that any person having any interest in the freehold estate of the following property known as all that and those the hereditaments and premises

situate at and known as 4a Saint Patrick's Road, Dalkey, in the borough of Dun Laoghaire and county of Dublin, being portion of the property formerly known as 3 Saint Patrick's, Dalkey, in the borough of Dun Laoghaire and county of Dublin, which said hereditaments and premises are more particularly and described on the map annexed hereto and thereon coloured red, and all that and those the hereditaments and premises being the plot of ground immediately adjoining the hereditaments and premises described in the first part of the schedule hereto, and which said hereditaments and described on the map annexed hereto and thereon coloured blue, and which said hereditaments and premises are situate in Dalkey in the bor-

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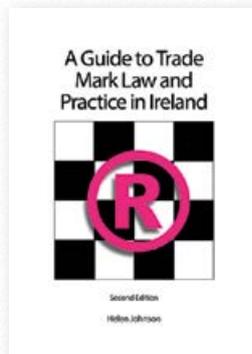
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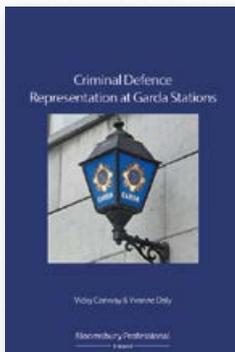


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### Criminal Defence Representation at Garda Stations

By Vicky Conway, Yvonne Daly

This book is essential reading for practitioners who attend garda stations regularly, those who want to conduct more of that work or those starting out in law, as well as gardai.

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ough of Dun Laoghaire and county of Dublin, held under an indenture of lease dated 1 December 1911 and made between Jane Frances Pigeon, Henry Robert Evans Disney, and John Edwards Hadden of the one part and Edward Alexander Porter of the other part for a term of 150 years from 1 November 1910, and was made partly in consideration of the sum of one shilling per year to be paid by equal half-yearly payment.

Take notice that Camus General Practice Limited intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 5 May 2023

Signed: BHSMLLP (solicitors for the applicants),  
 6-7 Harcourt Terrace, Dublin 2

**In the matter of the Landlord and Tenant Acts 1957-2019 and the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978**

Take notice that any person having any interest in the freehold estate of the following properties: (1) 1 Bridge Street (now called Parnell Street), Portlaoise, Co Laois, being the lands comprised in an indenture of lease dated 16 April 1880 and made between Thomas A Bailey of the one part and Henry Shaw of the other part, demised for a term of 61 years from 25 March 1880 and subject to a yearly rent of £12 per annum, and (2) the lands comprised in an indenture of lease dated 18 October 1887 made between Thomas A Bailey in the first part and Henry Shaw in the second part, being a demise of a plot of ground therein at Market Street (now called Parnell Street) in the town of Mountmellick, Co Laois, demised for a term of 61 years from 29 September 1887 and subject to a yearly rent of £10 per annum.

Take notice that Shaw & Sons Limited, as lessee of the said property under the said lease, intends to submit an application to the county registrar for the county of Laois for acquisition of the freehold and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforesaid property within 21 days from the date of this notice.

In default of any such notice being received, Shaw & Sons Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Laois for directions as may be appropriate on the basis that the persons beneficially entitled to all superior interests



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including the freehold reversions in the premises are unknown or unascertained.

*Date: 5 May 2023*

*Signed: Rolleston McEwée Solicitors (solicitors for the applicant), 4 Wesley Terrace, Portlaoise, Co Laois*

**In the matter of the Landlord and Tenant Acts 1957-2019 and the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978**

Take notice that any person having any interest in the freehold estate of the following property: 56 Main Street, Portlaoise, Co Laois, being the lands comprised in an indenture of lease dated 31 January 1946 and made between Sophia Louise Gill of the one part and William Hogan and Elsie Byrne of the other part, and being a demise of the premises therein called 56 and 57 Main Street Portlaoise, Co Laois, demised for a term of 99 years from 29 September 1945 and subject to a yearly rent of £15 per annum, now apportioned as to an annual rent of £7.50 per annum for 56 Main Street, Portlaoise, Co Laois.

Take notice that Donal Sands, as lessee of the said property under the said lease, intends to submit an application to the county registrar for the county of Laois for acquisition of the freehold and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforesaid property within 21 days from the date of this notice.

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

*Date: 5 May 2023*

*Signed: Rolleston McEwée Solicitors (solicitors for the applicant), 4 Wesley Terrace, Portlaoise, Co Laois*

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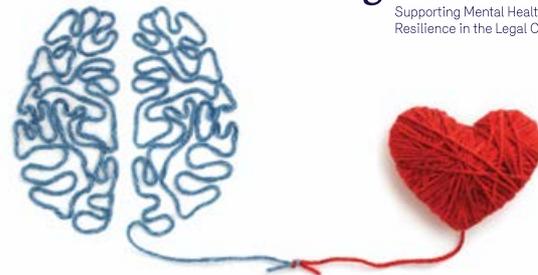
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## PRO BONOBO

## No bone to pick with you

● A federal court class-action suit is testing whether a ‘boneless chicken wing’ is really a wing, [NPR](#) reports.

The complainant bought ‘boneless wings’ from a Buffalo Wild Wings restaurant that he “reasonably believed were actually wings that were deboned”. In fact, they are chicken breast meat – cheaper than wings by more than \$3 per pound.

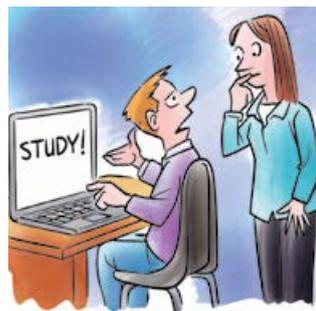
The man says that, had he known, he “would not have purchased them, or would have paid significantly less for them”. He alleges the chain “wilfully, falsely, and knowingly misrepresented” its boneless wings as actual chicken wings. The restaurant tweeted in response: “It’s true. Our boneless wings are all white meat chicken. Our hamburgers contain no ham. Our buffalo wings are 0% buffalo.”



## Turnitin tweaks AI detector

● Popular anti-plagiarism platform Turnitin is developing a tool to detect whether students have cheated using AI bots, like ChatGPT, to assist them with writing essays, [LegalCheek](#) reports.

Turnitin identifies similarities with existing sources and the likely percentage of copied and pasted text. The company has set up its own AI Innovation Lab to help detect the use of AI writing tools.



“I asked ChatGPT how to pass the exam.”

Turnitin’s David Adamson demonstrated an early version of the software. He input an essay composed by ChatGPT, which had been edited by him. The system calculated that 50% of the essay had been produced by AI, and identified that 22 of the 43 sentences had not been composed by a human – which Adamson figured was about right.

## ‘Handsome Zel’ risks gulag stint

● A 70-year-old Russian woman has been fined by a Moscow court after she described Ukrainian President Volodymyr Zelensky as “handsome.” Olga Slegina was fined about €446 for “discrediting the Russian army” in comments made at a December dinner party, the [Daily Beast](#) claims.

During a stay at a clinic on the Russian border with Georgia, she is reported to have said during a discussion on Ukraine: “Zelensky is a handsome young man with a good sense of humour!”

## Pink door gets makeover

● Miranda Dickson was ordered to change the colour of her front door in 2022 after an anonymous complaint to Edinburgh Council, [The Guardian](#) reports.

Nine months after completing a revamp of her property, Dickson received an enforcement notice that said she could be fined up to Stg £20,000 if she refused to

change the door colour. The local authority ruled that her ‘hot pink’ door was not “in keeping with the historic character” of the listed building.

# Introducing Legal Indemnity and Title Insurance

from Advent Risk Management limited.



A dynamic new insurance service for the legal profession has been announced by Advent Risk Management Limited who, for many years, has been one of Ireland's leading specialists providing Surety Bonds to Irish companies in the construction and industrial sectors.

**Niall Sheridan, Head of Advent Legal Indemnities talks us through this new offering.**

## Tell us how and why this has come to the market.

Following an increasing number of enquiries from clients in the construction and legal sectors for Title Insurance and other legal contingency risks, Advent undertook a review of the Legal Indemnity Insurance market in Ireland. It found that there were no experienced specialist insurance brokers in Ireland dedicated solely to providing Legal Indemnity Insurance products to the legal sector.

Paul Farrar, Managing Director of Advent, was familiar with these products from his previous role in Allianz. Establishing such a service has always been a goal of mine and following various conversations and a meeting of minds with Advent Risk Management, we decided to form the Advent Legal Indemnities offering. I am overseeing the set-up and operation as Head of Legal Indemnities.

## What is your background and what experience do you bring?

I have held senior positions in Legal Contingency, Surety and Guarantee for over 20 years. I started off in Hibernian Insurance (now Aviva Insurance Ireland DAC) providing Legal Contingency Insurance products to the majority of the legal practices in Ireland. I then moved to UK Title Insurer Titlesolv's Irish operation as Underwriting Director, post-Brexit overseeing the establishment and growth of Titlesolv Ireland, who now trade as WIL Speciality Insurance Limited. Through my different positions over the years, I have become known across the country as a specialist in Legal Indemnities and have had the pleasure of dealing with the majority of legal firms in the country. I will continue to use my specialist knowledge and considerable experience to provide the best service possible to the legal industry in Ireland through Advent Legal Indemnities. In addition to myself, we also have a strong team of experienced support staff.

## What makes your service unique?

Advent Legal Indemnities is a dedicated, specialist broker for legal practices and their clients with particular focus on Title Insurance risks. We understand that for complex risks, a bespoke solution tailored to the individual client's needs is often required and we offer specialist solutions for both residential and commercial risks. We are unique in that we hold agencies with all the main Title Insurance providers in Ireland including Aviva Insurance Ireland DAC, WIL Speciality Insurance Ltd., Dual Asset and First European Title. We take your enquiries and application and use our expertise to review and package the risk to be presented to all our insurers. This means that one application to us returns a choice of different quotes and draft policies, which eliminates the need for duplicate applications, saving both you and your clients time and money.

## What are the covers available with Title Insurance?

Our Title Insurance offerings protect lenders, property owners and developers against third party claims, arising from issues that may affect the title, use or the development of property. Cover is available for the following common risks:

- Defects in Title / Missing Deeds
- Restrictive Covenants
- Possessory Title / Adverse Possession
- Rights of Way / Access & Services
- Third Party Rights and Leasehold
- Breach of Planning / Building Regulations
- Deed of Gift / Transfer at Undervalue

## In addition to Title Insurance, what other Legal Indemnity products do you provide?

We also specialise in **Non-Resident Director Bonds (Section 137)** and offer all other Legal Contingency products including:

- Administration Bonds
- Lost Shares Indemnities
- Non-Resident Director Bonds
- Missing Beneficiary Insurance
- Executor & Inheritance Insurance

## What are the benefits for clients using a specialist broker like Advent legal Indemnities?

There are many obvious benefits in addition to the "one stop shop" element for solicitors. You will receive expert advice on the full range of risks. We provide a comparison of the covers being offered between different insurers. We save you and your clients time by making multiple applications on your behalf. We also save your clients money by outlining the best premiums available for the risks. Lastly, we are an Irish company, easily contactable and always have yours and your clients' best interest in mind.

## How do clients arrange cover?

Call Niall on **+353 1 920 3880** or email [niall@adventrisk.ie](mailto:niall@adventrisk.ie) and we'll be happy to help. Visit [www.adventrisk.ie/legal-indemnities/](http://www.adventrisk.ie/legal-indemnities/)



**Niall Sheridan,**  
Head of Advent  
Legal Indemnities.





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