A new guise
ByrneWallace boss moves on: Catherine Guy talks about her plans

Three of a kind
The 1920s saw the first women join the solicitors' profession in Ireland

Rebel rebel
Special care applications may be the most difficult of lists in the High Court

gazette

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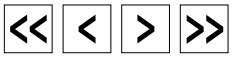

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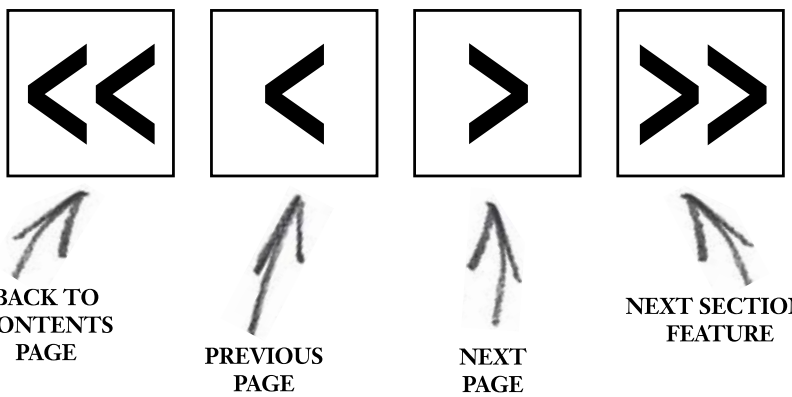

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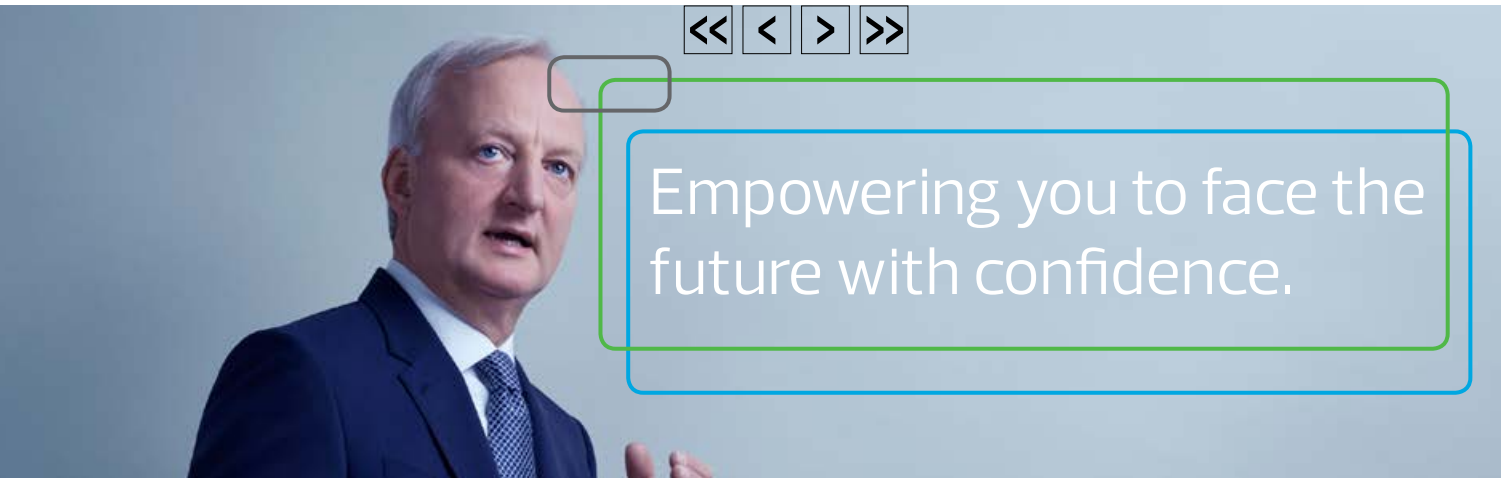

HELPING YOUR PRACTICE TO GROW

Does your legal practice have a clear strategy for growth in the current competitive landscape? Are you confused which business structure is most suitable for you? Do you have the financial information required to facilitate decision making? Is succession or staff retention a concern?

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Suzanne O'Neill
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GETTING GOING ONCE AGAIN

It's that time of the year again! Whatever day you started back after Christmas, most people felt that the first week back was the longest ever. It started with what is generally assumed to be the gloomiest day of the year.

This is not a mere subjective feeling. Science has been applied to it, and apparently the feeling can be expressed by the formula:

$$\frac{[W + (D - d)] \times T^{Q}}{M \times N_a}$$

where W = weather, D = debt, d = monthly salary, T = time since Christmas, Q = time since first breaching a new year's resolution, M = misery, and Na = the feeling of a need to take action.

Last year's fees targets are back at zero, no CPD has been done, the files you were going to do over Christmas are still on the desk and, generally, it's business as usual.

And thankfully, for most of us, business as usual is fairly good. Most sectors of our profession are reasonably positive, employment levels are very high, salaries and profitability are good and – despite the twin challenges of Brexit (and, shall we politely say, the US political situation) – Irish economic indicators appear benign, certainly for the short term.

Challenges

One area where challenges remain is that of the small and medium-sized practice, where profitability, recruitment/retention, and succession planning are proving to be difficult. That is not something that is unique to our profession.

The Law Society commissioned a market study of sole practitioners and smaller legal practices, and a major piece of work for the coming year will be communicating the very valuable messages from this study to those who need to hear them, as well as putting in place the necessary supports.

Stress at work

There is already in place an extensive suite of supports for colleagues who are experiencing stress or related difficulties in their jobs. My predecessor Michael Quinlan made the whole issue of taking care of ourselves one of the main projects of his year and, as part of that, research was conducted after the Law Society recognised a growing need for mental-health supports to be further developed and explored.

International activity in this regard is increasing and, with anecdotal reports of stress and mental health being an important issue for colleagues, a survey of Law Society members' perceptions of the current supports offered by the Society was commissioned, and its conclusions are currently being studied.

Watch this space

Nobody will be unaware of the current focus on the costs of insurance. A Personal Injuries Commission was put in place, and reported, and presumably its recommendations will be the subject of legislation.

However, the Trumpian campaign of propaganda by the insurance industry continues unabated, and the impression is deliberately being created in the public mind that a whiplash claim equals a fraudulent claim. Quite bizarre statistics are being trotted out. The Bar of Ireland and the Law Society recently commissioned an in-depth economic study – preliminary indications make for interesting reading. Watch this space.

> THE TRUMPIAN CAMPAIGN OF PROPAGANDA BY THE INSURANCE INDUSTRY CONTINUES UNABATED

Finally, to sign off on my first message, I'm reminded that Ronald Reagan once said that the nine most terrifying words were: "We're from the Government, and we're here to help." Whatever about the Government, the Law Society *is* here to help. There is the most astonishing range of information, professional support, CPD and education resources available to you. The *Member Services Directory*, runs to 54 pages! Keep it handy.

If you have any queries or issues, I am always contactable at president@lawsociety.ie.

PATRICK DORGAN,
PRESIDENT

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Blackhall Place, Dublin 7
tel: 01 672 4828
fax: 01 672 4801
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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

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FEATURES

REGULARS

THE BIG PICTURE

PIC: CHARLES MCQUILLAN/GETTY IMAGES

THE TOWN I LOVED SO WELL

A forensic officer inspects the remains of a car bomb that exploded outside Derry Court House on 20 January 2019. In a statement, dissident republican political party Saoradh linked the attack to the 100th anniversary of the Soloheadbeg ambush, which marked the beginning of the War of Independence. The Derry attack was condemned by Northern politicians. Concerns have been expressed about the risk of further attacks if a hard border is introduced following Brexit

WATERFORD ANNUAL DINNER

ALL PICS: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society Annual Dinner held in Waterford Castle recently were *(front, l to r)*: Richard Hammond (president, Southern Law Association), Liz Pope (CEO, Property Registration Authority), Patrick Dorgan (president, Law Society of Ireland), Edel Morrissey (president, Waterford Law Society), and Ken Murphy (director general); *(back, l to r)*: Jack Purcell (head of office, Waterford Court Service), Judge Tom Teehan, Brendan Ryan (CEO, Courts Service), Chris Delaney (garda superintendent, Waterford District), Judge Kevin Staunton, Judge Terrence Finn and Michael Bergin (head of the Department of Applied Arts, WIT)

Paul Murran, Orna Midleton, Valerie Staunton and Judge Kevin Staunton

Chris Delaney (garda superintendent, Waterford District), Helen Teehan, Joan Delaney and Judge Tom Teehan

Patrick Dorgan (president, Law Society of Ireland), Maria Dorgan, Edel Morrissey, (president, Waterford Law Society) and Danny Morrissey

Gillian Kiersey, Gerard O'Connor, Liz Pope (CEO, Property Registration Authority) and Deirdre O'Connor

HAMMOND HEADS UP SLA

ALL PICS: TONY O'CONNELL

The Southern Law Association (SLA) held its AGM on 13 November at the Clayton Hotel, Cork. Richard Hammond (partner at Hammond Good Solicitors) was elected president. Special guests included the newly elected Law Society president, Cork solicitor Patrick Dorgan, and director general Ken Murphy. Warm tributes were paid to Joan Byrne (O'Flynn Exham, solicitors) for her stalwart contributions to the SLA over the past 21 years. At the inauguration of the new council of the Southern Law Association were *(front, l to r)*: Elaine O'Sullivan, Emma Neville (PRO), Catherine O'Callaghan (secretary), Robert Baker (vice-president), Richard Hammond (president), Patrick Dorgan (president, Law Society of Ireland), Ken Murphy (director general), Joan Byrne (immediate past-president) and Juli Rea; *(back, l to r)*: Brendan Cunningham, Dermot Kelly, Terence O'Sullivan, Barry Kelleher, Jonathan Lynam, Kieran Moran, Daniel Murphy, John Fuller and Sean Durcan (treasurer)

The €10,000 proceeds from the Calcutta Run, held in Cork last May, was shared equally between SHARE and The Hope Foundation

Newly elected SLA president Richard Hammond with his wife Joyce Good Hammond

Barry Kelleher (SLA Council), Emma Neville (SLA PRO) and Jonathan Lynam (SLA council)

LLM ADVANCED LEGAL PRACTICE GRADUATES

PIC: CIAN REDMOND

Pictured at the LLM Advanced Legal Practice graduation ceremony at Blackhall Place were: *(front)*: Fiona O'Donovan, Jan Cookson (Northumbria University), Dr Gabriel Brennan (Law Society) Dr Geoffrey Shannon (Law Society) then President Michael Quinlan, Professor Lucy Winskell (Northumbria University), Ms Justice Rosemary Horgan (President of the District Court), Dr Freda Grealy (Diploma Centre), Rory O'Boyle (Diploma Centre) and John Kennedy BL; *(back)*: Richard Lee, Edward Carroll, Cassandra Byrne, Barbara Egan, Joyce A Good Hammond, Roisin Hickey, Judge Paul Kelly, Tadhg Kelly, Edward Hughes, Orode Moses Oyiki, Jane O'Halloran, Frances Hamilton (Northumbria University) and Kellie O'Flynn

WCBA BIENNIAL DRAWS A CROWD TO WEST CORK

PIC: GEORGE MAGUIRE PHOTOGRAPHY

The West Cork Bar Association (WCBA) held its biennial conference recently at the Inchydoney Lodge and Spa. The conference continues to grow from strength to strength, and attracts a cross-section of solicitors and barristers. *(Front)*: Dr Rhona Mahony (speaker, Master of the National Maternity Hospital), Mr Justice George Birmingham (President of the Court of Appeal, and conference chair), Kevin O'Donovan (president, WCBA), Siún Hurley (honorary secretary, WCBA), and Colette McCarthy (conference organising committee); *(back)*: Paul Tweed (speaker, media lawyer and solicitor), Andrew Cody (speaker, Reidy Stafford Solicitors), Barry Donoghue (speaker, deputy DPP), Liam Crowley (treasurer, WCBA), Roni Collins (conference organising committee), and Maurice Collins SC (speaker)

KILDARE MEMORIAL EVENT

ALL PICS: MARTINA HANUSOVA/TONY G MURRAY PHOTOGRAPHY

The Kildare Solicitors' Bar Association (KSBA) paid tribute to two deceased colleagues with the unveiling of their portraits at a memorial event in Naas Courthouse on 20 December. The late Judge Grainne O'Neill passed away in May 2018, while her good friend Ann Nowlan died in September 2014. Both had battled cancer for a number of years. Simon and Harry O'Neill (nephews of the late Judge Grainne O'Neill) are seen here assisting Tom Smith (husband of Ann Nowlan, solicitor) with unveiling the portraits at Naas Courthouse. (See story, page 19)

At the unveiling of the portraits of the late Judge Grainne O'Neill and Ann Nowlan (solicitor) at Naas Courthouse were *(l to r)*: Terry O'Neill (father of Grainne), Alan Rossarius, Sandra O'Neill, Olaf O'Neill, Simon O'Neill, Harry O'Neill, Tom Smith (husband of Ann Nowlan), Debbie Chapman (artist), Bridget Nowlan (sister of Ann) and Fiona O'Neill

Sharon Murphy (State Solicitor) and Judge Gerard Griffin (Circuit Court)

Esmonde Keane SC and Judge James O'Donoghue (Circuit Court)

Avril Delaney (solicitor) and Sarah Pierce (solicitor)

Judge Geraldine Carthy (District Court) and Helen Coughlan (president, KSBA)

FIRST-IN-CLASS CONFEREES

Mrs Eilish Rock and her daughter Jennifer present the Jon Rock Prize to Ruthanne Monaghan who received the highest grade for the Certificate in Company Secretarial Law and Practice

Michael Carrigan (Arthur Cox Foundation Board) presents the Arthur Cox Foundation prize to Brendan Curran who achieved the highest grade in the Diploma in Commercial Litigation

ALL PICS: CIAN REDMOND

Tríona Ní Fhinneadha receives second prize in the Certificate in Company Secretarial Law and Practice from Salvador Nash (president, ICSA: The Governance Institute)

Elma Lynch (Arthur Cox Foundation Board) presents the Arthur Cox Foundation prize to Susanne Cunningham who achieved the highest grade in the Diploma in Aviation, Leasing and Finance

Elma Lynch presents the Arthur Cox Foundation prize to Claire O'Sullivan Greene who achieved the highest grade in the Diploma in Technology Law and IP

Michael Carrigan presents the Arthur Cox Foundation prize to Conor O'Reilly who achieved joint highest grade in the Diploma in Law

Michael Carrigan presents the Arthur Cox Foundation prize to Katherine Mulholland who achieved joint highest grade in the Diploma in Law

Elma Lynch presents the Arthur Cox Foundation prize to Mairead McGuinness who achieved the highest grade in the Diploma in Finance Law

JUDICIAL APPOINTMENTS

New appointees have been named for the Circuit Court, the District Court, and the General Court of the European Union.

Judge Anthony Michael Collins and Judge Colm MacEochaidh have been reappointed as two of the 23 judges of the General Court of the EU.

John O'Connor

Carol Anne Coolican

Judge John O'Connor moves from the District Court to the Circuit Court, following the retirement this month of Judge Doirbhile Flanagan.

Solicitor Carol Anne Coolican will serve on the District Court, filling a vacancy following the retirement of Judge Mary Devins in October.

DISTRESS CALLS PEAK AT MENTAL HEALTH HELPLINE

Distress calls to the legal mental health charity LawCare have almost doubled in relation to stress and bullying. The organisation received its highest ever number of calls from British and Irish lawyers in 2018.

Last year, LawCare took 932 calls from 624 callers. The most common reasons for calling were stress (26%), followed by depression (19%), and anxiety (11%).

Calls about bullying and harassment jumped from 38 calls in 2017 to 68 last year. The majority of callers to the helpline were women (64%), while 48% were trainees or pupils or had qualified in the past five years.

Other issues included concerns about disciplinary proceedings (8%), career development (9%), chronic illness, alcohol and drugs, and relationship issues.

LawCare can be contacted at 1800 991 801 in Ireland and is open Monday to Friday from 9am to 7.30pm, and on weekends and bank holidays from 10am to 4pm. For more information, see www.lawcare.ie.

HOW INNOVATIVE IS YOUR PRACTICE?

The Diploma Centre's Certificate in Business Law and Innovation will give you and your staff a practical insight into the legal and commercial needs of start-ups and SMEs. Experienced lawyers and industry experts will provide an overview on areas such as:

- E-commerce and online business,
- Employment law,
- Social media and liability, and
- Data protection and compliance.

Sign up at www.lawsociety.ie/diplomacentre.

FIRST DISTILLER'S RETAIL LICENCE

At a sitting of the District Court in Castlebar on 6 December, Lough Mask Distillery in Co Mayo became the first distillery in Ireland to be granted a licence to sell its gin, vodka, and whiskey to members of the public under the *Intoxicating Liquor (Breweries and Distilleries) Act 2018*.

Until the licence was granted, visitors to the distillery were unable to purchase the distillery's own products at its visitor reception area.

LIBRARY CHARGE CHANGES

Law Society Library charges for document supply changed on 1 January.

Charges were last reviewed in 2016 and have been traditionally based on the 'per-page' model. The new price structure reflects the fact that many documents are now available to download from online platforms that the library subscribes to, and can be delivered as a PDF document or as a link.

Such 'born digital' documents will be priced at €10 plus VAT, regardless of length.

Documents that need to be scanned from print sources will continue to attract a per-page charge.

Precedents from *Irish Conveyancing Precedents*, LexisNexis *Encyclopaedia of Forms and Precedents* and PSL will cost €50 plus VAT.

Full details of all 2019 library charges are available online.

BREXIT A 'DEFINING MOMENT' FOR IRELAND, SAYS MINISTER

The Minister for Financial Services and Insurance Michael D'Arcy says that "Brexit is the overarching challenge for Ireland right now. Britain's exit from the EU will be the defining moment in our relationship, both with the UK and with the rest of Europe."

The minister was speaking at the #Agenda Seminar on 24 January, organised by the British Irish Chamber of Commerce, which discussed the challenges and opportunities that Brexit would create for the sector in Ireland, Britain and across Europe.

PIC: PAUL SHERWOOD

Eddie Cullen (managing director, commercial banking, Ulster Bank), John Cronin (president, British Irish Chamber of Commerce), Michael D'Arcy (Minister for Financial Services and Insurance), Jane Howard (CEO, Ulster Bank), Brian Daly (chair, British Irish Chamber of Commerce Financial and Professional Services Committee, and partner, KPMG in Ireland) and Michael Hodson (director, asset management and investment banking, Central Bank of Ireland)

While Ireland regretted Britain's decision to leave the EU, the Government would work to maximise any opportunities that arose, he said, and would help to provide solutions for firms in difficulty as a result of Brexit.

The minister said he believed that Britain would emerge from its current "chaotic" phase, and that decisions on a new trading structure would emerge – but that Ireland had to remain agile and flexible in response.

"Ireland is the third-largest funds jurisdiction in the world, and the second largest in Europe," he said. In total, 7,200 funds were managing €2.48 trillion in assets domiciled here, which were supporting 16,000 jobs.

He concluded by saying that investment limited partnership legislation would be updated to make it more relevant in the current climate. Brexit could see a shift from back-office to front-office functions in financial services and asset management in Dublin, the seminar heard. In the original IFSC plan, front-office operations had been envisaged.

John Cronin (McCann FitzGerald partner and chair of the British Irish Chamber of Commerce) told the *Gazette* that leading law firms were witnessing a small increase in overseas clients seeking their assistance in finding Brexit solutions. The Central Bank recognised some time ago that Ireland was likely to become host to new types of financial services products as a result of Brexit, and had indicated a readiness to expand its range of supervisory activities.

"The range and nature of products in Dublin is increasing and, consequently, the nature of the advices and work being carried out is also expanding," he said.

IRISH LEGAL MARKET 'RIPE FOR DISRUPTION'

Global behemoth DLA Piper wants to be an agent for change in the Dublin legal market, its principals have told the *Gazette*. "There's been quite a long period of the Irish law business looking very similar," says Ireland managing partner David Carthy.

The firm made the decision to open a Dublin office five years ago, long before Brexit. "People assume it was a direct result of Brexit, but it really isn't," global co-CEO Simon Levine explains.

DLA Piper's global co-CEO Simon Levine

Ireland managing partner David Carthy

"We thought there was a strategic need here. We worked with Irish law firms, which are high quality, but at the end of the day, a lot of DLA Piper business is built on being involved in over 100 global legal panels for multinationals around the world," he said.

"We started to look at Dublin and, in the middle of that, the Brexit referendum happened. From our point of view, having another common law, English-speaking jurisdiction was always going to be helpful anyway within Europe, so Brexit was an additional helpful factor, but it wasn't the reason we chose to come here."

Read the full story on Gazette.ie *(search for 'DLA Piper').*

TWO MONTHS IN PARIS?

The participants in the 2018 *Stage International*

The *Stage International*, organised by the Paris Bar, is a French-based programme directed at international lawyers who seek to gain first-hand knowledge and experience of the French legal system.

The first month focuses on the central principles of French and international law. In the second month, participants join a Parisian law firm to experience French law in practice.

Alicia Foley (Matheson) was selected by the Law Society's EU and International Affairs Committee as the 2018 Irish participant. "I was one of 33 lawyers from 22 different countries who took part in the programme", she says.

"The French system places a large emphasis on oratory skills, and we, as *stagiaires*, participated in mock pleadings and constructive feedback sessions at the Paris Bar. The *Barreau* also organised private visits to various judicial and state institutions in Paris and Strasbourg, including the *Conseil d'Etat*, the *Assemblée Nationale*, and the ECHR."

PARIS, OCTOBER-NOVEMBER 2019

Every year, the Paris Bar organises an *International Stage* in Paris and invites a limited number of lawyers from each jurisdiction to participate. The *Stage* takes place in October and November. It entails one month of attending classes at *l'École de Formation du Barreau* and one month of work experience in a law firm in Paris. The Irish participant will be selected by the Law Society's EU and International Affairs Committee. Candidates must:

- Be qualified in Ireland and registered with the Law Society,
- Have a good knowledge of French,
- Be under 40 years old, and
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar. Candidates must be willing to cover other expenses (travel, accommodation, meals). The EU and International Affairs Committee will sponsor the participant with €2,500.

To apply, send your CV and a letter explaining your interest in the Stage (in both English and French) to Deirdre Flynn (d.flynn@lawsociety.ie).

The application deadline is Friday 19 April.

IRISH SOLICITOR JOINS CCBE LEADERSHIP TEAM

Dundalk solicitor and former Law Society president James MacGuill has been elected third vice-president of the Council of Bars and Law Societies of Europe (CCBE). The appointment will see him set to become CCBE president in 2022.

MacGuill told the *Gazette*: "We all know how important it is for Ireland to be active in Europe now."

The CCBE represents the bars and law societies of 45 countries, and through them more than one million European lawyers.

The new leadership team began its term of office in January, with José de Freitas (Portugal) taking over as president.

Law Society director general Ken Murphy welcomed the appointment, saying: "James will only be the second Irish lawyer to become president of the CCBE, and will follow in the footsteps of John Fish. James will be the first past-president of the Law Society to be elevated to this position. We congratulate and wish him every success."

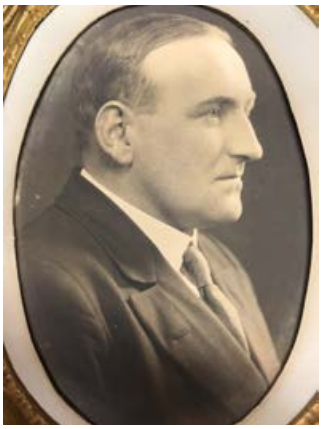
CARLOW SOLICITOR CELEBRATES 62 YEARS

Carlow solicitor John Michael Foley is celebrating a significant milestone this year, clocking up 62 years on the Roll of Solicitors, just as he celebrated his 83rd birthday in January.

Born on 25 January 1936, John M was the only son of John C Foley, also a solicitor, and his wife Bridgey Foley (née Kinsella), who also had an older daughter, Anne. His dad entered the Roll of Solicitors in 1916 and began practising in Bagenalstown, Co Carlow, where he was joined in the practice by James Hogan in 1917.


John M Foley in the 1970s


John M Foley and his sister Anne at his parchment ceremony in 1957


John's father, John C Foley

In 1930, the firm moved to its current location on Station Road. John C died in 1951. John M completed his apprenticeship at the very young age of 21, stepping into the practice in 1957.

Two sons have also completed their apprenticeship in the practice – John G Foley and Des Foley, who qualified in 1994 and 2001 respectively. And the Foley granddaughters are following in the legal tradition – Clare is currently a PPC1 trainee, while Sarah is completing her FE1s at present.

LAW SOCIETY FINTECH SYMPOSIUM

The Law Society Fintech Symposium on 7 March deals with the *Payment Services Directive*, which goes live in September.

Speakers will include Patrick Dorgan (president, Law Society), Paul Healy (chief executive, Skillnet Ireland), Paula Reid (A&L Goodbody), Michael Ashe (barrister and QC), Philip O'Reilly (professor, UCC), Christopher Martin (A&L Goodbody), Claire Fitzpatrick (ConsenSys Ireland), Frank Kelly (payments regulation consultant), Kevin O'Brien (Central Bank of Ireland), and Anne-Marie Bohan (Matheson).

Under the directive, account-servicing payment service providers must now give access to their customers' balance and transaction data. This will facilitate new interfaces through which third-party providers can access payment accounts.

SHIELDS AND KILROY MERGER

LK Shields and Kilroys Solicitors merged on 3 December 2018. Kilroys is now operating from LK Shields' Dublin offices at 40 Upper Mount Street, Dublin 2.

Established in 1954, Kilroys' client base includes multinational companies, owner-managed businesses, Government and public bodies, as well as private clients.

Making the announcement, LK Shields' chairman Michael Kavanagh said: "This merger represents further strategic growth for the firm and will allow us to support our clients with additional expertise and experience, and enable us to expand into new areas of legal practice."

Emmet Scully (managing partner, LK Shields), Joanne Griffin (partner) and Michael Kavanagh (chairman)

As a result of the merger, three new partners have joined LK Shields from Kilroys: Joanne Griffin (former managing partner at Kilroys), Eamon Jones, and Patrick Ryan.

ENDANGERED LAWYERS

HODA ABDEL MONEIM, EGYPT

The Egyptian authorities carried out a sweep of arrests and detentions in early November, picking up over 40 human rights defenders, political activists, and persons supporting political prisoners and their families, and holding them in unknown locations, incommunicado.

They were interrogated by the State Security Prosecution and, on 21 November, nine were charged with joining and funding a terrorist organisation, and incitement to harm the national economy. Lawyers representing them were not permitted access to the case files or allowed to speak with their clients in private. These arrests are widely seen as politically motivated and the charges as trumped up.

One of the nine is Hoda Abdel Moneim (60), a human rights lawyer, former member of the National Council for Human Rights, and spokesperson for the Revolutionary Coalition of Egyptian Women (a group close to the Muslim Brotherhood), based in Cairo. She and her daughter Fadwa were asleep in their flat on 1 November at 1.30am when the authorities came to arrest her. Her daughter reported that their apartment door was forced, nearly 20 officers stormed in, blindfolded her mother, did not allow her to take any belongings or medication (she has deep vein thrombosis), and did not allow her mother to speak to her or say goodbye. They had no warrant.

Hoda had been providing legal assistance to the families of people who have been victims of enforced disappearances in Egypt. As part of her efforts to document cases of those forcibly disappeared, she volunteered as a consultant for the Egyptian Coordination for Rights and Freedoms (ECRF), a prominent human rights organisation that was hard hit in the latest crackdown. The UN documented 258 cases of forced disappearance between May 2017 and May 2018.

So far, it does not appear that any of the nine has been brought before a judge to review whether there is any lawful basis for their detention.

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

FSP OMBUDSMAN PUBLISHES LEGALLY BINDING DECISIONS

The Financial Services and Pensions Ombudsman (FSPO) has published 228 legally binding decisions.

The decisions show that the vast majority of complaints were resolved through mediation. Of the 234 that required formal investigation, 127 were fully, substantially or partially upheld. A total of 107 were not upheld.

The power to publish legally binding decisions about complaints was granted to the FSPO under the *Financial Services and Pensions Ombudsman Act 2017*. The aim of publishing its decisions, the FSPO says, is "to enhance transparency and understanding of the powers and services of the office".

The FSPO deals with a wide range of complaints relating to insurance, banking, credit facilities, investments and pensions.

Among the directions made by the FSPO in 2018 were:

- Compensation of €3,000 to a driver who lost his no-claims bonus after reporting a crash caused by an uninsured driver,
- Compensation of €250 to an individual whose travel insurance policy automatically renewed, and who was refused a refund when she sought to cancel the policy,
- Compensation of €90,000 to a couple whose mortgage provider adopted an obstructive approach after they fell into arrears with a buy-to-let mortgage,
- Compensation of €7,000 and the correction of an individual's Irish Credit Bureau rating after the lender failed to inform him that his loan had not been fully paid off, despite it ceasing the collection of direct-debit payments,

PIC: ROLLINGNEWS.IE

Ger Deering, Financial Services and Pensions Ombudsman

- Compensation of €3,750 to a customer whose bank opened a new account without her consent or knowledge.

Ombudsman Ger Deering says: "I welcome the fact that the majority of complaints were resolved through the informal mediation process we provide, as this delivers a faster outcome that is acceptable to both parties. In 2018, we resolved approximately 2,300 complaints through this informal mediation process."

He cautioned, however, that it was clear from the published decisions that some providers did not always act in the best interest of their customers: "I have found that it is still the case that some providers are not willing to listen to or engage sufficiently with their customers in order to resolve disputes. Where disputes are not resolved by agreement, I will continue to use the extensive powers available to me to investigate and adjudicate complaints in a transparent and impartial manner to ensure fairness and, where necessary, to direct providers to pay compensation or rectify their conduct."

HUGE TURNOUT FOR OUTLAW LAUNCH

OUTLaw, an LGBT+ network for the legal sector in Ireland, was officially launched at the National Gallery of Ireland on 23 January 2019. *(From l to r)*: Chief Justice Frank Clarke, Peter Ryan (OUTLaw chair), Ms Justice Aileen Donnelly and Patrick Dorgan (president, Law Society of Ireland)

There was a huge turnout at Dublin's National Gallery on 23 January for the launch of OUTLaw, a networking and lobbying group for LGBT+ people working in the legal sector.

Committee member Chris Murnane explained that OUTLaw intends to coordinate and capitalise on the LGBT+ initiatives being undertaken by many law firms in the capital. The ten-person OUTLaw committee is drawn from across the large firms, and Chris thanked those firms for their continued wholehearted support and commitment.

There is no data available on the number of LGTB+ professionals working in the legal sector in Ireland, but Chris said that such data would be crucial for the success of diversity and inclusion initiatives. He thanked the Law Society for being "incredibly supportive" of OUTLaw.

"As you may be aware, Patrick Dorgan, in his role as president of the Law Society, has appointed a task force to draft a gender equality, diversity and inclusion policy for the Society, and has asked for input from OUTLaw, which will be one of our first post-launch tasks."

He thanked the many members of the Law Society present at the launch for their support.

Maeve Delargy (Arthur Cox) said that to have a legal world as diverse as the clients it served, everyone had to feel welcome.

Networking was a by-product, but not the main goal, of OUTLaw, she said. There was a need for LGTB+ role models at the top of the legal world.

Chief Justice Frank Clarke commented that the development of the rule of law required diversity among those who influenced such decisions: "Without that diversity, there is a lack in the proper development of the law."

He added that any initiative that encouraged the initial participation in, and open retention of, those from diverse backgrounds in the upper reaches of the legal profession must form a valuable part in promoting the proper development of the law in Ireland.

DATA RETENTION AND DESTRUCTION OF PAPER AND ELECTRONIC FILES

The Technology Committee and the Guidance and Ethics Committee have jointly issued a practice note on data retention and destruction of paper and electronic files, which is available in the practice notes section of the Law Society's website.

The note is an update to the last retention practice note published in 2005. It repeats and, where required, revises the position in relation to adequate periods of retention following the completion of a transaction on behalf of the client, as well as the effective deletion of a file.

A solicitor is not required to retain a file indefinitely. At the start of a matter it is worth explaining to your client that you operate a retention policy – this can be set out in your written terms and conditions. Clients can also be notified about a retention policy via an online privacy policy. Clients should be advised if they will be charged a search/retrieval fee for taking up files from storage.

In all situations, documentation being retained or stored in an electronic storage format should be retained for at least the same period as the paper version would. Where documentation is properly stored in an electronic format (and subject to any specific statutory or regulatory limitations on storage or retention in electronic format), the paper version (if one existed) need not be retained. It should be noted that hard-copy files will need to be retained to comply with some legislation, for example, the *Solicitors Accounts Regulations* require originals of documents to be held.

The Law Society's *Guide to Good Professional Conduct for Solicitors* (3rd edition) provides that in order to protect the interests of clients who may be sued by third parties and also to protect the interests of a solicitor's firm that may be sued by former clients or by third parties, a solicitor should ensure that all files, documents and other records are retained for appropriate periods.

(Appropriate periods refer to the relevant statutory period for the issue of legal proceedings.)

The *Gazette* will publish the practice note in full in the March 2019 issue.

EU & INTERNATIONAL AFFAIRS COMMITTEE

STAGE INTERNATIONAL À PARIS 2019

OCTOBER – NOVEMBER 2019

LAW SOCIETY OF IRELAND

ORDRE DES AVOCATS DE PARIS

Every year, the Paris Bar organises an International Stage in Paris and invites a limited number of lawyers from each jurisdiction to participate. The stage is a fantastic opportunity for lawyers to discover and practice French law in the heart of Paris.

The stage takes place during the months of October and November and entails: one month attending classes at l'École de Formation du Barreau and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to the European institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society
- Have a good knowledge of French
- Be under 40 years old
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar. Candidates must be willing to cover other expenses (travel, accommodation, meals)[1]

Interested?

To apply, please send your CV and a letter explaining your interest in the Stage (in both English and French) to Deirdre Flynn (d.flynn@lawsociety.ie).

Application deadline: Friday 19 April 2019

[1] The EU & IA Committee will sponsor the participant with €2,500.

COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

CORK

SLA HONOURS JOAN

Emma Neville (Ahern Roberts O'Rourke Williams & Partners, Carrigaline) tells 'Nationwide' that the traditional SLA handover lunch took place on 14 December at Jacobs on the South Mall. Newly appointed SLA president Richard Hammond presented Joan Byrne (outgoing president) with her past president's badge. A special presentation was also made to Joan of a beautiful portrait to honour and thank her for her huge contribution over the last 21 years to the Southern Law Association.

KILDARE

KILDARE TRIBUTE TO SPECIAL COLLEAGUES

Eithne Coughlan (County Registrar), Fiona Kerins BL, Bridget Nowlan (sister of Ann Nowlan), Terry O'Neill (father of Grainne O'Neill), Tom Smith (husband of Ann Nowlan), Karen O'Brien BL, and Helen Coughlan (president, KSBA)

Kildare solicitors paid tribute to two special colleagues with the unveiling of their portraits at a memorial event at Naas Courthouse on 20 December. Organised by the Kildare Solicitors' Bar Association (KSBA), the late Judge Grainne O'Neill and Ann Nowlan, solicitor, were remembered by their colleagues and friends.

The late Judge O'Neill passed away in May 2018, while her good friend Ann Nowlan died in September 2014. Both had battled cancer for several years.

KSBA president Helen Coughlan paid tribute to her two colleagues: "This is a bittersweet occasion, to remember and celebrate the lives of these two wonderful women who were taken from us far too soon."

The KSBA commissioned artist Debbie Chapman to paint both portraits. They now hang in the newly refurbished practitioners' room of Naas Courthouse. (See page 9.)

DUBLIN

BON APPETIT, ET BIENVENUE À LYON

Marathon man Greg Ryan has got off to a flying start in his year as president of the Dublin Solicitors Bar Association. It may have something to do with his marathon-running hobby or perhaps he has just been in training.

Fresh from chairing the DSBA/Law Society symposium at the Mansion House, Ryan went straight into introducing the DSBA annual conference, which will take place in the gastronomic capital of France, Lyon, from Thursday 19 September to Sunday 22 September. Delegates will stay at the five-star InterContinental Lyon – Hotel Dieu, where the heavy-duty learning will take place.

In addition to the CPD aspect, an excursion is planned to the nearby Beaujolais wine region, as well as a cruise on the Rhone and the usual networking events. The conference highlight will be the final dinner, slated to take place in L'Abbaye Paul Bocuse, one of Lyon's most famous and favourite gastronomic experiences.

Last year's conference sold out immediately, so book now to avoid disappointment. All details and the brochure are to be found at www.dsba.ie.

GROWTH AND STABILITY IN PC NUMBERS IN 2018

A total of 10,972 solicitors held practising certificates at the end of 2018 – an increase of 4.8% on 2017. **Ken Murphy** analyses the data

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY

There were 10,972 solicitors with practising certificates (PCs) on 31 December 2018 – an increase of 511 (or 4.8%) over the 10,461 PC holders on the same date in 2017.

This 4.8% year-on-year increase in the total number of PC figures contrasted favourably with the increase of 3.5% in PC numbers in the previous year.

For the fourth year in a row, the Law Society is publishing, with some analysis, the numbers of practising certificates issued by the Society on the last day of the previous practice year (31 December 2018) for the firms with the 20 largest numbers.

The 2,653 practising certificates held by solicitors in the 20 largest firms on 31 December 2018 was 128 higher than the 2,525 on the equivalent date in 2017. This represents 5% growth – just marginally higher than the 4.8% growth in PC numbers in the profession as a whole.

These growth rates are hardly surprising, given the buoyant economy in Ireland in 2018. In its most recently available projection for gross domestic product (GDP) growth, published in mid-December 2018,

> IT MAY BE THAT 2018 WILL BE REMEMBERED IN IRELAND, INDEED IN MOST PARTS OF THE GLOBE, AS A HALCYON YEAR OF ECONOMIC GROWTH THAT MAY NOT BE MATCHED FOR SOME TIME TO COME

LAW FIRM PRACTISING SOLICITOR NUMBERS (AS OF 31/12/2018)

2018 ranking	2017 ranking	Firm name	31/12/2018	Diff +/- over 2017	31/12/2017
1	2	Arthur Cox	294	20	274
2	1	A&L Goodbody	292	-1	293
3	3	Matheson	285	17	268
4	4	McCann FitzGerald	278	31	247
5	6	Mason Hayes & Curran	227	26	201
6	5	William Fry	211	-9	220
7	7	ByrneWallace	136	9	127
8	8	Maples and Calder	113	-2	115
9	9	Eversheds Sutherland	104	1	103
10	10	Ronan Daly Jermyn	101	6	95
11	13	Beauchamps	85	6	79
12	12	Dillon Eustace	83	1	82
13	11	Freshfields Bruckhaus Deringer LLP	78	-8	86
14	14	Eugene F Collins	61	2	59
14	15	LK Shields Solicitors	61	5	56
16	16	Hayes Solicitors	55	6	49
17	17	Walkers Ireland	53	6	47
18	18	Philip Lee	49	5	44
19	19	McDowell Purcell Solicitors	48	6	42
20	20	Holmes O'Malley Sexton	39	1	38
TOTAL			2,653		2,525

These figures represent the total number of solicitors with a practising certificate, advised to the Law Society, up to and including 31/12/2018. The total firm figure comprises a firm's primary and suboffices on the Law Society's database


PIC: CIAN REDMOND

the Central Statistics Office projected that Ireland's full-year GDP growth in 2018 would be a remarkable 7.5%. Gross national product (GNP), an alternative measure that strips out the effects of multinational profits, was up 5.2% from the second to the third quarter, and was projected to grow at an impressive rate close to 5% in the year 2018 overall.

Nevertheless, most commentators expect a slowdown in economic growth globally in 2019 – not least because of the uncertainties and likely negative consequences of Brexit. It may be that 2018 will be remembered in Ireland, indeed in most parts of the globe, as a halcyon year of economic growth that may not be matched for some time to come.

The table published here of the PC numbers for the 20 largest firms in this jurisdiction in 2018 provides the equivalent figures for 2017.

Reviewing the growth in the 20 largest firms over the last year, indeed over the last four years, the picture is characterised not just by growth, but stability. There has been relatively little change, for example, in the size-ranking table. The majority of firms find themselves, relative to other firms, in or about the same position as they were last year, and in the years preceding it.

The bragging rights of being the 'largest firm' have been passing back and forth between Arthur Cox and A&L Goodbody. The neck-and-neck nature of this contest could be seen starkly in 2016 when each had exactly the same number of practising solicitors (275).

A&L Goodbody surged ahead in 2017 by a margin of no less than 19, but the Arthur Cox number rebounded strongly in 2018, with the effect that, on 31 December, it was ahead by 294 to 292 – a margin of just two. Matheson with 285, once again in third place, has been remarkably consistent – growing by 17 PCs in each of the last two years.

The star performer in PC growth numbers in 2018 was McCann FitzGerald, with an increase of 31 practitioners – probably the biggest single-year PC growth number for an Irish firm ever. It remains in fourth place, however.

The Mason Hayes & Curran increase of 26 was also remarkable and not far behind. It would have been the fastest growing firm most other years and, in fact, in percentage growth terms, its increase is slightly ahead of that of McCann FitzGerald. This growth enabled Mason Hayes & Curran to leapfrog William Fry to fifth place in the table.

The firms ranked from sixth to tenth in size remain in this table in exactly the same order as in the previous year. Ronan Daly Jermyn with 101, breaks the 'barrier' to join, for the first time, the firms with PC numbers in three digits.

What impact on this growing, but stable, picture will result from the arrival, for the first time, of international law firms establishing in Dublin? One of the world's largest firms, Freshfields Bruckhaus Deringer LLP, is already on this list in 13th place. However, this is somewhat misleading, as the PC holders remain based in their offices in London and Brussels. The firm has no office in Ireland nor, it has said publicly, any plan to open one here.

Pinsent Masons has established in Dublin in the wake of the Brexit vote, but the challenge to the firms on this list is likely to come in more powerful form from the declared 'disruptor' – the world's fourth largest law firm, DLA Piper (see p13 of this *Gazette*). g

DEALING WITH CHANGE AND UPHEAVAL

Mary Hallissey gives a taste of the discussion at this year's annual Law Society In-house and Public Sector Conference

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

IF IN-HOUSE COUNSEL WERE ALLOWED TO DO PRECISELY WHAT THEY ARE PAID TO DO IN CARRYING OUT THEIR LEGAL FUNCTION, THEN A LOT OF THE CALAMITOUS CORPORATE COLLAPSES THAT WE HAVE EXPERIENCED IN RECENT YEARS MIGHT HAVE BEEN AVOIDED

The definition of a lawyer in Ireland is determined by membership of a professional representative body such as the Law Society, legal advisor Patrick Ambrose told this year's Law Society In-house and Public Sector Conference on 8 November at Blackhall Place. But this approach isn't shared across Europe, he added.

Patrick pointed out that Ireland doesn't differentiate between in-house and private practitioners, but acknowledges lawyers by their membership of their relevant national association.

He said that Ireland was lucky to have an integrated and well-functioning Law Society that feeds into the work of the Council of Bars and Law Societies in Europe (CCBE) in defending the independence of lawyers and the rule of law. The CCBE is backing European Council plans for a European convention on the profession of lawyer.

The importance of defending lawyers as they do their jobs was amply illustrated at the conference by former legal counsel for Irish Water, Jenny Fisher. Irish Water was the subject of public protests against water-meter installation throughout 2015.

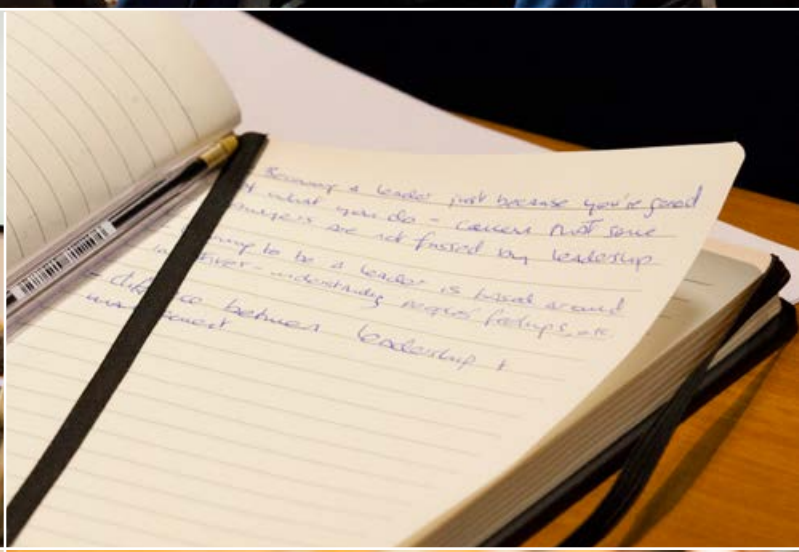
This led to a pressurised environment but, despite that, Fisher said there wasn't a single time when the senior management team turned on each other, which was the greatest endorsement of the people working at Irish Water.

She described Irish Water as the best job she ever had, despite a volatile external atmosphere at the time. Though the role was filled with change and upheaval, the relationships in the organisation were strong enough that no one ever 'lost the rag', Fisher said.

"Change and upheaval were really happening to us," she explained. "A lot of it was outside

(Front): Anna-Marie Curry, Ken Murphy, Ciaran Fenton, Pádraic Ó Máille, Mark Cockerill and Louise Campbell; *(middle)*: Ronan Lennon, Jeanette Crowley, Deirdre McDermott, Rachael Hession and Jenny Fisher; *(back)*: Robert Heron, Alan Stewart, Grainne McLaughlin, Tommy Reilly, Seána Cunningham and Helen Martin

ALL PICS: CIAN REDMOND



> NO ONE CAN LEAD UNLESS THEY FULLY ENGAGE WITH BOTH THEIR OWN AND OTHERS' FEELINGS. SHOWING VULNERABILITY IS NOT A WEAKNESS. THEREFORE, LAWYERS MUST FIND A WAY TO INCREASE THEIR EMOTIONAL INTELLIGENCE IF THEY WANT TO BE LEADERS IN THEIR BUSINESS

our control, and we were reacting to that. People were under horrendous personal pressure."

Despite potential difficulties such as these, Mark Cockerill (chair of the In-house and Public Sector Committee and the director of legal services at eir) said that general counsel (GC) were in a very privileged position and could have hugely satisfying careers.

"I think the general level of career and personal satisfaction is higher in-house," Cockerill said, pointing out that many GCs become CEOs.

Profit motive

GCs, however, must never forget that they are officers of the court first and business people second. "You are different," leadership consultant Ciaran Fenton told the gathered general counsel, urging them to tell their businesses to behave and do the right thing.

Fenton has worked extensively with private practice and in-house lawyers, and said that, when they go in-house, lawyers bring their legal know-how to a business with a profit motive.

But when the lawyer's purpose becomes unmoored because of that profit motive, there is increased risk. GCs are core to a business, he said – yet one step removed – because they get to apply the legal position to the business proposition.

He advised the addition of an appendix to employment contracts that recognises that GCs are different and that they cannot be business people first and lawyers second. If in-house lawyers are not motivated by financial incentives, they can keep a cooler head, Fenton believes – but lawyers should always be paid enough to take the issue of money off the table.

Personality types

Seána Cunningham (director of enforcement and anti-money-laundering at the Central Bank) observed that we tend to gravitate towards those who are like us, but that this can be counterproductive in work situations where diversity of thought is so important. She emphasised the importance of challenge in the context of diversity.

Robert Heron (GC at Dunnes Stores) spoke about the importance of building a diverse team that represents all personality types, which were explored in an address by consultant Pádraig Ó Máille (which will be covered in a forthcoming *Gazette* article).

"You can have a majority of people you like on a team, but it is really good human resources' practice to have a mix of personality types," Ó Máille explained.

Clanwilliam GC Ronan Lennon observed that, in business, there are two types of people – those who ask for forgiveness, and those who ask for permission.

Communication breakdown

Solicitor Helen Martin (director of regulation at the Charities Regulator) spoke about the importance of conscious communication. Different communication styles were debated.

"I feel there is an automatic rush to communicate," Robert Heron responded, but there are times when it's not right to communicate, such as when one doesn't have control of all the facts. "In my experience, time can heal an awful lot of problems that you feel instinctively you have to talk about. In many cases, you are better off not to communicate and let time take its course."

Bord na Móna GC Anne Marie Curry said it could be difficult to find the balance when all of the answers were not to hand. "I prefer not to go out and communicate when I don't have all the details," she said.

Mark Cockerill told the conference that good communication in times of consistent change was the key skill of the modern era.

Law Society Council member Tommy Reilly (Kingspan) observed that, in business, it was important to adapt communication styles to different cultures when trading internationally.

Legal function

Ciaran Fenton commented that, if in-house counsel had been allowed to do precisely what they

were paid to do in carrying out their legal functions, then a lot of the calamitous corporate collapses that occurred in recent years might have been avoided. "My view is that legal functions are sometimes not allowed to do what they should do," he told the *Gazette*.

All lawyers had to be bright, he told the conference, but they also needed to be emotionally intelligent.

"Lawyers would lead better, and feel better about themselves, if they engaged in the whole process of increasing their emotional intelligence, which is about empathy and self-awareness and about negotiating one's needs productively," he said.

Different voices

Director general Ken Murphy described himself as an in-house solicitor of sorts, since he had left A&L Goodbody to lead the Law Society. He pleaded with attendees to make their voices heard more loudly at Law Society Council level, pointing out

that there was only one GC currently represented – Thomas Reilly of Kingspan. The Scottish Law Society has had three presidents from the in-house sector, he pointed out.

Reiterating the significance of the sector, Murphy noted that AIB employed 108 solicitors with practising certificates. "If AIB were a law firm, it would be the ninth biggest in the State, behind Maples and Calder, and ahead of Eversheds," he said.

In-house lawyers were a vibrant, dynamic, expansive and important part of the Law Society,

he repeated, and he expressed the desire to see them contributing more to the development of the profession as a whole.

'That stupid letter'

Ciaran Fenton told the conference that many lawyers ended up in leadership roles of one sort or another but, often, were not prepared or trained for this. They were in leadership positions because they had an overriding duty to the court to ensure that justice was achieved.

Fenton told the gathered lawyers: "You are guardians of the rule of law and defenders of our hard-won democracies. And when it comes to upholding the rule of law, your role is to protect us from ourselves – as one general counsel put it, to stop us sending that stupid letter; to put the good of society above what is expedient for the business or organisation."

In-house lawyers should sit back more and reflect on their personal purpose within an organisation, he believed.

But Mark Cockerill dissented from the view that in-house counsel were in an adversarial situation: "We are all on the one team," he said.

Vulnerability

Fenton countered, saying that many lawyers experienced elevated ethical pressures. "Society grabs very bright young people from university and puts them through law school – where they are force-fed an adversarial model and, more often than not, made to value thinking over feeling," he said.

But no one could lead unless they fully engaged with both their own and others' feelings, he commented. Showing vulnerability was not a weakness. Therefore, lawyers must find a way to increase their emotional intelligence if they wanted to be leaders in their business.

Ken Murphy observed that the personality type attracted to law tended to be interested in the 'nitty-gritty' and 'focus', and didn't tend to like management because "people get in the way of the law".

He added, however, that the greatest predictor of career success was emotional intelligence, and the capacity to lead people.

"In the Law Society, we are planning to do more to teach 'soft skills' by communicating to trainees the importance of active listening skills. We are going to elevate their importance. I greatly believe that all these skills can be learned in the same way as advocacy, drafting and negotiating," the director general noted.

The conference heard that, in the in-house and public sector, leadership and management were treated as synonymous, but only a very rare subsection were good at both. Good leaders might not have managerial flair.

Panel speakers, including Coillte's Grainne McLaughlin and Kingspan's Thomas Reilly, discussed the new paradigm of businesses that were not built to last, but built to change and to fail fast. This was a great challenge for lawyers, they argued, which required specialised training. g

FOCAL POINT

BEHIND THE SCENES

The conference theme was dealing with change and upheaval and was organised by the Society's In-House and Public Sector Committee in partnership with Finuas Skillnet.

The speakers were Ciaran Fenton, consultant Pádraic Ó Máille and Patrick Ambrose, chief legal officer at DLL Ireland DAC.

The session chairs were Mark Cockerill (chair of the In-House and Public Sector Committee and director of legal services at eir) and Anna-Marie Curry (company secretary and GC at Bord na Móna).

The panellists were Helen Martin (director of regulation at the Charities Regulator), Seána Cunningham (director of enforcement and anti-money-laundering at the Central Bank), Ronan Lennon (GC at the Clanwilliam Group), Jenny Fisher (head of corporate affairs at Premier Lotteries Ireland DAC), Alan Stewart (chief legal officer at the National Asset Management Agency), Tommy Reilly (in-house counsel at Kingspan), Grainne McLaughlin (GC and company secretary at Coillte), and Robert Heron (GC at Dunnes Stores).

DOMESTIC VIOLENCE ACT STRENGTHENS VICTIMS' RIGHTS

New laws in relation to domestic violence came into effect on 1 January 2019. **Keith Walsh** highlights the major changes and innovations in the new legislation

KEITH WALSH IS THE CHAIR OF THE LAW SOCIETY'S FAMILY AND CHILD LAW COMMITTEE

WHERE THE COURT FORMS THE OPINION THAT THERE ARE REASONABLE GROUNDS TO MAKE THE APPROPRIATE ORDER, THE LANGUAGE OF THE ACT STATES THAT THE COURT 'SHALL' MAKE THE APPROPRIATE ORDER

The *Domestic Violence Act 2018* was commenced in January. It amends and consolidates the law on domestic violence and is one of the most significant family law statutes introduced in the past 20 years.

Great credit is due to members of the Law Society's Child and Family Law Committee who, for the past 20 years, have been advocating for reform of the domestic violence laws. In particular, Joan O'Mahony, Noeleen Blackwell and Cormac Ó Culáin, due to their submissions and work on this act, have made an immense contribution to this legislation.

More prescriptive

In determining applications under this act, the court must have regard to all the factors or circumstances that it considers may have a bearing on the application, including, where relevant, a non-exhaustive list of 17 factors or circumstances, which are set out in section 5(2) of the act.

The court must give reasons for its decision to grant or refuse an application or, if applicable, give reasons for its decision to make the specified order subject to exceptions or conditions, and to vary any exceptions or conditions (section 17).

Where the court forms the opinion that there are reasonable grounds to make the appropriate order, the language of the act states that the court 'shall' make the appropriate order, whereas, in the 1996 act, the court 'may' make the order.

The Courts Service is now obliged to provide each applicant with information on, and contact details for, support services for victims of domestic violence (section 28).

In (criminal) proceedings relating to a breach of an order under the act, the judge 'shall' exclude from the court during those proceedings all persons, except officers of the court, persons directly concerned with those proceedings, *bona fide* representatives of the press, and such other persons (if any) as the judge may in his or her discretion permit to remain (section 34). In the same proceedings, a new offence in relation to publication of information about the parties to enable their identification is created by section 36 of the act, and the penalties are set out in section 37.

Emergency barring orders

The court can make an emergency barring order to direct a respondent to either leave a place or to prevent them from entering a place where the applicant or a dependant resides.

The granting of an emergency barring order may prohibit the respondent using or threatening the use of violence against, molesting or putting in fear, attending at, or in the vicinity of, or watching or besetting a place where the applicant or a dependent person resides, and following or communicating (including electronically) with the applicant or a dependent person.

A person may apply for an emergency barring order where:

a) The applicant is not the spouse or civil partner of the respondent and has lived in an intimate and committed relationship with the respondent prior to the application (note: no mandatory minimum period of residence is required), or
b) The applicant is the parent of an adult respondent, and
c) The applicant has no legal or beneficial interest in the dwelling, or an interest that is less than the legal and beneficial interest of the respondent, and
d) There are reasonable grounds to believe that there is an immediate risk of significant harm to the applicant or a dependant.

An emergency barring order may be made *ex parte* and will remain in force for a period not exceeding eight working days (whether *ex parte* or on notice).

Where an emergency barring order has been made against a respondent, no further emergency barring order shall be made against the respondent on application by, or on behalf of, the same applicant unless a period of

PIC: SHUTTERSTOCK

THERE IS NOW ADDITIONAL RELIEF PROHIBITING FOLLOWING OR COMMUNICATING WITH THE APPLICANT OR DEPENDANT

at least one month has elapsed since the expiration of the last day of the period specified in the first-mentioned order, unless the court is satisfied that there are exceptional circumstances that justify the making of a further order.

Changes to orders

Safety orders – the requirement for a couple to be living together in an intimate relationship has been removed (and, consequently, a protection order). Now, under the 2018 act, the parties simply have to have been in an intimate relationship at the time of the application, with no reference to living together – section 6(1)(a)(iii).

Barring orders – the requirement for a couple to have been living together six out of the previous nine months in an intimate relationship has been removed as one of the prerequisites to an application for a barring order (and, consequently, an interim barring order). Now the parties must have simply lived together in an intimate relationship prior to the application, with no reference to a minimum time period – section 7(1)(c).

There is now additional relief prohibiting following or communicating with the applicant or dependant. In addition to the usual reliefs granted for barring, safety, interim barring, and protection orders (and the new emergency barring order), the court can now, as part of these orders, prohibit the respondent from "following or communicating (including by electronic means) with the applicant or the dependent person".

Any information sworn as part of an application for an interim barring order must now state whether the property from which it is sought to bar the respondent on an interim basis is also a place of business of the respondent, or includes or abuts a place of business of the respondent.

The formalities in relation to providing a note of evidence, and the information or affidavit sworn in *ex parte* applications for interim barring orders, now apply in an equivalent manner as applicable to *ex parte* applications for protection orders – section 10(9).

Voice of the child

The court may seek the views of children where a safety or barring order is sought on behalf of a child. The court may appoint an expert to assist it in ascertaining the views of the child (section 27).

Special court sittings

A member of the Garda Síochána not below the rank of sergeant may request the Courts Service to arrange (a) a special sitting of the District Court to facilitate the making and determination

of an application for an interim barring order, an emergency barring order, or a protection order, and (b) an application for a safety order or a barring order where necessary to facilitate the making of the orders in (a) above (section 24).

Coercive control

Section 39 defines the new criminal offence of coercive control as knowingly and persistently engaging in behaviour that is controlling or coercive, that has a serious effect on a spouse or a person who is, or was, in an intimate relationship with the alleged offender, and that a reasonable person would consider likely to have a serious effect on a relevant person. The penalty on summary conviction is a class A fine or imprisonment for a term not exceeding 12 months, or both, while the maximum tariff on conviction on indictment is a fine or imprisonment for up to five years, or both.

Other changes

- An offence of forced marriage (section 38).
- A protection against cross-examination conducted in person by the applicant or respondent of the other party or a dependant (section 16).
- The court can direct that an order be served personally by a member of An Garda Síochána (section 18).
- Applicants for domestic violence orders and those alleging breach of orders may give evidence by live television link, both in civil cases and in criminal cases, for breaches of orders with the leave of the court. Those under 18 may give evidence in this manner unless the court sees good reason to the contrary (section 25).
- The applicant can be accompanied to court by a person of his or her choosing to provide support during a civil hearing (section 26).
- The court can recommend, when making an order under the act, that the respondent engage with services, such as programmes aimed at perpetrators of domestic violence, addiction or counselling services. The court may also consider, when hearing the application in question, the engagement of the respondent with any such programme or service, and may also consider the applicant's view of the effect of such engagement on the respondent (section 29).
- Where a violent or sexual offence is committed by a person against his or her spouse, civil partner or person with whom he or she is in an intimate relationship, that fact shall be an aggravating factor at sentencing (section 40).
- Marriage exemptions permitting those under 18 to marry have been repealed (section 45(1)).
- Transitional and continuation arrangements have been put in place to ensure a smooth transition.

The changes in the act will, first of all, strengthen the rights for victims of domestic violence and will, secondly, assist in enabling Ireland to ratify the Council of Europe convention on preventing and combating violence against women and domestic violence (the *Istanbul Convention*).

EXAMINERS TO THE RESCUE

Shareholder disputes cause trading difficulties and, often, ultimately insolvency. **Barry Lyons** argues that examinership is the perfect vehicle to resolve the dispute if the core business is viable

BARRY LYONS HAS PRACTISED FOR OVER 20 YEARS IN COMMERCIAL LITIGATION, DISPUTE RESOLUTION AND COMPANY RESTRUCTURING

ABSENT ALL THE SHOUTING, ALLEGATIONS, CLAIMS, COUNTER-CLAIMS AND HOO-HA THAT ARE TYPICAL OF SHAREHOLDER DISPUTES, IF A COMPANY QUALIFIES FOR IT, EXAMINERSHIP IS THE FASTEST, AND ULTIMATELY MOST EFFICIENT MANNER OF THEIR RESOLUTION

Causes of disputes are often rooted in economic recovery – when opportunity presents itself again, the directors cannot agree on the direction the company should take. Issues include how it should be recapitalised, how fast it should gear back up, or 'who gets what'. The directors may still be under personal financial pressure or their personal circumstances may not be aligned, with some needing more from the company than others. This has the potential to influence their view of the company's appropriate course of action.

When everyone was bumping along at the bottom of the cycle, there was nothing to fight over. However, as the economy improves, the potential for value appears – and so do cracks: the fight intensifies and, in the absence of agreement about strategies, decision-making stasis can cause trading losses to spiral out of control.

As an independent officer appointed by the court, an examiner is unlike a judge. He will get into the nuts and bolts of the company's trade and operations over a significant period of time, which makes him an ideal independent adjudicator for this type of dispute resolution.

Other options

Options to resolve these disputes otherwise include minority oppression applications under section 212 of the *Companies Act 2014* and the eye-watering costs associated (including separate legal representation for the shareholders and the company), all typically paid for from the company's remaining diminishing assets.

After a bruising encounter in the Four Courts – including the incredible disruption that such proceedings cause – if the company wasn't in difficulty beforehand, its position will inevitably dramatically deteriorate afterwards. Winding-up applications are sometimes tactically made in lieu of oppression proceedings, with one side of an argument that can see the commercial opportunity presented looking to acquire company assets, including goodwill, from 'their' liquidator.

Options on the 'other side' include either resisting the liquidator's appointment (which rarely works), or getting involved in an auction with the liquidator to buy the company's assets, or taking the initiative by petitioning to have an examiner appointed to the company and have him (there has never been a female examiner, by the way) decide the way to resolve the shareholder dispute.

Advantages of examinership

There are two fundamental requirements for a company to avail of examination: it has to be insolvent, and it has to have a reasonable prospect of survival as a going concern.

In the space available, it is presumed both apply. In relation to the insolvency, it can be on an assets versus liabilities basis, or its ability to discharge liabilities as they fall due and owing. Liabilities include outstanding director and shareholder loans – in calculating its liabilities, section 509(3)(b) of the *Companies Act 2014* allows a company take "into account its contingent or prospective liabilities", and so is suitable for many companies supported by shareholders over the past years where balances remain outstanding to these connected parties.

Four recent cases illustrate the advantages of the examinership process in determining shareholder disputes: *In Re Quesada Developments Limited* (2017), *Re Ryco Book Protection Services Limited* (2018), *Re Frontier Entertainment Limited* (2018), and *Re Yvolve Limited* (2018).

In *Quesada*, a long-running dispute regarding the status of three inter-shareholder loan accounts undermined the operation of the company, which runs a nursing home. Here, on one shareholder's version of events, the company was completely insolvent – but, on another's, so long as forbearance was exercised by the shareholders, it was not. In his proposals for a scheme of arrangement, the examiner correctly recognised the limitations of the scope of his appointment and removed himself from allegations of bias in determining

PIC: SHUTTERSTOCK

the dispute. He had the issue remitted to an expert experienced in the area for determination.

Arising from the expert's binding determination, the shareholders each received a dividend, which was enhanced following the expert's determination. The only shareholder in a position to raise the funds required to provide for the proposals (not the petitioning member) ultimately retained control of the company.

In *Ryco*, a long-running and extremely acrimonious dispute about ownership of trade secrets and research, as well as other multi-faceted inter-shareholder litigation, ultimately was resolved under the overarching scope of the examination. The court confirmed the proposals, which compromised company liabilities and retained its entitlement to recover where elements that were assets of the company remained. Once again, the successful bidders were those that were best placed to provide the funds required to pay the company's obligations under the proposals.

Frontier was a company that had completed most of the works required to refurbish a property in which The Vaults visitor attraction was to be located, and from where it would operate. Here the majority shareholder blamed the other shareholders for construction costs overruns and sought an examiner's appointment, presumably envisaging that the process would compromise its creditors and cancel the minority shareholders' interest in the company. An unanticipated investor trumped their strategy; the minority shareholders retained most of their stake and took into the business an altogether more suitable partner.

In *Yvolve*, when a petition for the examiner's appointment was filed, the company shareholders realised just how perilous their position was in terms of their continued membership of the company. The Sword of Damocles of the examiner's appointment and the potential cancellation of their shares focused the minds – the inter-shareholder dispute was resolved prior to the return date for the confirmation of the examiner's appointment, and the petition was withdrawn.

Untouchables

The examinership process is pure for two reasons. The first is that the examiner is immediately answerable to the court, and there are costs implications for them if a finding of objective bias is made as to their treatment of company stakeholders. The second reason is that, ultimately, disputes are resolved with one side coming up with more money than the other to invest in the company for the benefit of its creditors.

With the resolution of the shareholder dispute as part of the examinership process, there are other positive side effects: the company balance sheet is also repaired, there will be investment (where without its framework it would be impossible), and the removal of the conflict enables the company to trade uninhibited.

Because the examiner and his lawyers are the only professional fees incurred by the company during the process (other than the petitioner fees and costs, which should be easily established up front), the cost to the company and its shareholders will be dramatically less than a fully-fledged shareholder dispute.

Absent all the shouting, allegations, claims, counter-claims and hoo-ha that are typical of shareholder disputes, if a company qualifies for it, examinership is the fastest, and ultimately most efficient manner of their resolution. g

GUARDIAN ANGELS

Post GDPR, is it time to health-check your data protection regime? **Terry McAdam** separates the wheat from the chaff

TERRY MCADAM IS MANAGEMENT CONSULTING PARTNER AT RSM

In May last year, to a backdrop of wall-to-wall media coverage, the most significant change to data protection legislation for a generation became enforceable in the shape of the *General Data Protection Regulation* (GDPR).

Whether the regulation – and the related *Data Protection Act 2018* that gave it effect in Ireland – did actually represent a seismic shift in the rights of data subjects and the corresponding obligations of those controlling personal data is debateable. On reflection, it appears to have represented more of an updating and extension of the rulebook that previously governed this space in order to acknowledge the advances of technology and data-management practices.

Irrespective of the scale of the real change brought about by the GDPR, it has had an undeniable impact, which no successful business can ignore – how their personal data will be safeguarded is now a key consideration for individuals when they choose any service provider, including their legal advisors.

This scenario has forced service organisations, across the EU and beyond, to establish projects to ensure they can robustly manage the personal data shared by their clients or customers and present themselves as reliable guardians of such data.

Legal practices are not immune from this important development with respect to client expectations, and many have instigated projects over the last year to ensure they comply with their data protection obligations regarding the equally important constituencies of clients and staff.

Emerging insights

Given the passage of time since the introduction of the new regulation and the emerging insights into the practical business implications arising from its implementation, we are now seeing demand from our clients to review their approach to personal data management and the success of their delivered GPDR compliance projects.

Such evaluations typically have three goals:

- To ensure the organisation is appropriately complying with its current data protection obligations,
- To identify opportunities to optimise the efficiency and effectiveness of the activities that underpin such ongoing compliance, and
- To ensure the level of resources applied to achieving compliance is appropriate.

It seems likely that the leaders of legal practices, regardless of their size and the focus of their services, will also have interest in such a health-check review of their data protection approach.

Based on our project-experience to date, the exact remit and scale of such reviews will require tailoring to reflect the nature of the data risks faced by each entity. Nonetheless, we would encourage those considering commissioning such a data-protection health-check review to ensure that the key elements set out below remain within scope.

AT A GLANCE

- The GDPR has had an undeniable impact that no successful business can ignore
- It has forced service organisations to establish projects to ensure they can robustly manage the personal data shared by their clients or customers
- Within the context of a legal practice, it is particularly important that those charged with managing data-subject requests are equally aware of the data they must provide to data subjects and, where applicable exemptions exist, to allow such requests to be rejected (or partially complied with) so as to not compromise future legal proceedings

Data protection policies

Concise data protection policies are necessary to serve as the foundation of the data protection regime of any legal practice.

Key policies will include:

- Data retention,
- Data subject-request management, and
- Data-breach management.

It is imperative that these policies have been properly communicated to all personnel and are underpinned by robust procedures. Ongoing adherence to these policies must be periodically monitored via either the appointed data protection officer and/or other personnel with compliance responsibility.

The data-retention policy is generally regarded as the most critical of the data-protection policy suite, given that, in conjunction with an information asset register, it seeks to address some important topics, including:

- The key sets of personal data held by the practice,
- The role of the practice and whether it acts as a data controller or data processor with regard to each dataset,
- The legal basis on which the practice relies for processing the data, and
- The current retention period for each dataset.

Thus, the review of the policy (and the related register) and adherence to these is a central aspect of the review.

Data-subject requests

Readers of recent annual reports from the Data Protection Commission (DPC) will be already aware that a significant portion of the complaints reported by data subjects

> SERVICE ORGANISATIONS HAVE HAD TO ESTABLISH PROJECTS TO ENSURE THEY CAN ROBUSTLY MANAGE THE PERSONAL DATA SHARED BY THEIR CLIENTS OR CUSTOMERS AND PRESENT THEMSELVES AS RELIABLE GUARDIANS OF SUCH DATA

> IT SEEMS LIKELY THAT THE LEADERS OF LEGAL PRACTICES, REGARDLESS OF THEIR SIZE AND THE FOCUS OF THEIR SERVICES, WILL ALSO HAVE INTEREST IN SUCH A HEALTH-CHECK REVIEW OF THEIR DATA-PROTECTION APPROACH


PIC: WIKIMEDIA

centre around two scenarios – data-controller responses to data-subject requests; and the management of personal data in the context of data breaches. Hence, a practice's approach to both requires attention if interest from the commission is to be avoided.

Data-subject requests may include applications for copies of personal data held regarding a data subject, or subsequent requests for data to be corrected or erased. Many of our clients are currently experiencing a significant increase in the volume of the data-subject requests received post GDPR. It is, therefore, vital that the internal processes to acknowledge a request and comply with same (within the specified timelines) are lean, if the costs of such compliance activity are not to increase markedly.

Within the context of a legal practice, it is particularly important that those charged with managing data-subject requests are equally aware of the data they must provide to data subjects and, where applicable exemptions exist, to allow such requests to be rejected (or partially complied with) so as to not compromise future legal proceedings.

A review of how such recent requests have been managed is likely to present opportunities for both learning and process improvement.

Data-breach management

Data breaches occur in every organisation. Simple user errors such as sending an email to an unintended recipient are commonplace, while cyber-attacks represent a growing risk to all professional services firms. It is, therefore, very important that such scenarios are managed with rigour.

Due to the short timeline (72 hours) within which an actual data breach must be reported to the DPC, it is necessary to have effective internal processes in place to support the reporting of potential breaches and the subsequent documentation, evaluation, and recording of same within the required registers by the DPO or other capable personnel. If reporting to the DPC or affected data subjects is required, such communications will require careful drafting and may require input or agreement from third parties, including insurers or public relations advisors.

A review of the management of such

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> MANY OF OUR CLIENTS ARE CURRENTLY EXPERIENCING A SIGNIFICANT INCREASE IN THE VOLUME OF THE DATA-SUBJECT REQUESTS RECEIVED POST GDPR

potential breaches is likely to yield possibilities to further hone the process, while sharing summaries of real-life breaches is useful in terms of boosting staff awareness of the risks around data practices.

Data-processing documents

Normally, the sharing of personal data between a legal practice and its client will be governed by a letter of engagement that will include content setting out the obligations of the practice with respect to the data concerned, and whether it will be acting as a data controller or data processor within the business relationship.

Given the increased interest from data subjects in how their data is managed, and the larger penalties that can be imposed by the DPC on organisations that do not meet their data-protection obligations, our clients are very focused on properly governing circumstances where they proceed to share such personal data with other organisations.

Typically, such scenarios are governed by either data-sharing or data-processing agreements. The latter usually overseeing scenarios where data is being shared with a contracted provider to allow the delivery of services to the legal practice in line with agreed specifications or instructions. Data-sharing agreements, while similar in nature, relate to the sharing of data with a party that will act as a data controller in parallel with the legal practice – for instance, another legal firm or a professional expert.

A review of samples of each document will build confidence within the organisation that letters of engagement, data-sharing agreements, and data-processing agreements are being used appropriately (based on the nature of the business relationships), and that their content is robust and properly governs the risks associated with such data sharing. Meanwhile, a review of the registers being maintained for each document type will provide some insight into the extent of the use of such agreements to manage data-sharing arrangements.

In the post-GDPR era, the process of agreeing the content of such documents can require considerable resilience, as both clients and suppliers can be cautious about signing up to agreements that can include onerous or complex data-protection terms.

In addition to the priority matters set out above, a data-protection health-check could also explore other relevant topics, such as the quality of the technical and organisational measures underpinning the data-protection regime, the level of staff awareness of both data-protection risks and procedures, and the progress of the organisation in complying with its stated retention periods via the conduct of data purging.

Ultimately, the value of such a review will be twofold in nature.

It will identify shortcomings in the current approach that need to be addressed to boost compliance with the current legislation and best practice, while also identifying those areas where current practices could be adjusted to improve how compliance is achieved.

The outcome of such a review is likely to inform the scope and conduct of a further GDPR compliance project to enhance your data-protection approach. Is it time you checked the health of data compliance in your firm? g

Introducing the new Guy

Leading transactional lawyer Catherine Guy has departed ByrneWallace after 29 years. She tells **Mary Hallissey** about her second act

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

Catherine Guy has recently stepped down as ByrneWallace's managing partner after over six years at the helm and – as she draws the 29-year association with the firm she joined as a newly qualified solicitor to a close – she is reflective about her career.

Catherine left ByrneWallace on 21 December where, as she says, she "grew up" as a solicitor. There is some anxiety, she concedes, about leaving the firm and the tremendous support that a large firm offers. "There is so much I'm going to miss. I will miss the degree to which I'm looked after centrally. I work with a really great bunch of people. To some extent, I'll miss the routine – but I'm also really excited," she says.

In the new year, she muses, she will know that she's really alive, because of the fear factor. "That's part of the reason I'm making the move, though I'm not an adrenalin junkie," she comments, pointing out that she learned so much as managing partner and has loved the challenge.

"I've always thought curiosity is an underrated attribute," she says of her move and the buzz of the next challenge.

Byrne Collins Moran, on Pembroke Road in Dublin 4, was where Catherine did her traineeship. It subsequently merged with Hanby Wallace and ultimately became ByrneWallace.

Life in the fast lane

"I'm literally a 'lifer' with the same firm," she laughs, recalling that she did work experience with BCM even before her traineeship. "It's been a great firm to work with, and I've been lucky to have the opportunity to do and learn so much here, which is part of the reason for the move. I feel I'd like to do something a bit different now, and I'm looking forward to that next challenge – whatever it may be! If I didn't make a move now, I'd probably never do it," she observes.

"ByrneWallace has been a huge part of my life for 29 years. I've grown up here. I met my husband here. I have a huge loyalty to the people in ByrneWallace," she says. "Now I plan to become part of the gig economy, working on various, and varying, projects from the start of 2019."

In her role as managing partner, Catherine enjoyed leading the business through both external and internal change – and kept the business relevant in a changing market. The firm's current headcount is 350 staff, with 46 partners.

The plan is to apply her business and legal brain to a variety of projects, some very different from her established expertise as a transactional solicitor specialising in large property transactions and developments.

"My asset class happened to be property and I love a deal. I love getting a deal closed and I love all the constituent elements," she reveals, adding that she relishes the intellectual rigour that comes with it.

AT A GLANCE

- Catherine Guy has recently stepped down as ByrneWallace's managing partner "to become part of the gig economy, working on various, and varying, projects from the start of 2019"
- The plan is to apply her business and legal brain to a variety of projects, some very different from her established expertise as a transactional solicitor specialising in large property transactions and developments

Giant steps

Over the next five to ten years, Catherine believes the way law firms deliver their services will change radically due to technology. And this will allow for radically different ways of working.

ByrneWallace offers different arrangements to staff, including part-time, flexibility around hours, and some working from home.

THERE IS SO MUCH I'M GOING TO MISS. I WILL MISS THE DEGREE TO WHICH I'M LOOKED AFTER CENTRALLY. I WORK WITH A REALLY GREAT BUNCH OF PEOPLE. TO SOME EXTENT, I'LL MISS THE ROUTINE – BUT I'M ALSO REALLY EXCITED

ALL PICS: CIAN REDMOND

"We have always tried to offer the best fit for the person. To get the best people, you need to be open to suggestions of flexibility, within reason."

Colleagues in their 20s and 30s have a different perspective on life, Catherine believes, and in some ways they "have it sussed", she says. "They look at what was required from people of my vintage and have decided that there are some compromises they are not willing to make.

"They are whip-smart, extremely well-educated, and so articulate. Their innate confidence and their innate belief in themselves make them more forthright about expressing that.

"When I was growing up through the system, to some extent I was led by the nose. You almost followed a pre-determined path.

"From my experience, I think that there is an expectation among the next generation of lawyers that their careers will be, to some extent, curated and they will be mentored. They are more focused on making positive decisions around what they want in life."

Catherine observes wryly that, when making job offers to newly qualified solicitors, she ended up being grilled in detail about why they should accept the job.

"My first experience involved me being interviewed for two-and-a-half hours, in a very respectful and focused way. She was testing me about what my vision was for the

business as managing partner and, in other words, why she should tether her career to ByrneWallace.

"To my shame, I was not wholly prepared for this, though I was always aware that giving a job wasn't a gift, as there are two sides to it. There has to be a meeting of minds."

So, 'millennial thinking' is different but, while self-esteem may present as higher, Catherine isn't sure how deep it runs at other levels: "These are confident and articulate people, very presentable and polished, and that can sometimes lead us to assume that they don't need to be nurtured."

While Catherine says that Brexit is not a good thing for Ireland, she doesn't see it as a particular threat to Irish law firms.

"I suspect there will be more competition in the market. Some of the British firms have already come in," she says. "I wouldn't be so naïve to say it's wholly an opportunity, but I always look for an upside. For our particular sector, I don't think that the competition is something to be terribly fearful about.

"I think the market in Ireland is very well served. I suspect that the British firms who are coming into the Irish market have predominantly done it for reasons associated with their existing client base, who may be moving or already have a base in Ireland, as opposed to necessarily coming in with the sole aim of competing and disrupting."

Catherine believes that the affordability of technology is a much more serious challenge to Irish law.

"Big-ticket technology, such as data-mining software, is completely doable by most firms, but there is a cost in terms of time and commitment," she points out.

The vast majority of law firms in Ireland are smaller firms, and their ability to keep up and compete, in time and investment, is a huge factor. "Those who have the resources to do things differently and more efficiently and more quickly are going to be considerably more successful than those who don't."

ByrneWallace has put a lot of work into IT, and its cousins – data and cyber-security. It was the first top ten law firm in Ireland with ISO accreditation.

"That was a huge commitment in man and woman hours. It was a big project, but it's hugely important to ensure that, across all layers of the business, handling and managing data are completely covered off." And it has been worth it in terms of business and as a mark of quality in how the business is run, she believes.

"It allows us to sleep better at night," she concedes, particularly post-GDPR, when the penalties for data breaches are so severe. And she believes that the quality mark gives clients additional confidence that ByrneWallace is a well-run business.

Good times, bad times

Catherine is surprised that there has not been more consolidation activity in the Irish legal market in the past few years.

FOCAL POINT

FAMILY GUY

The mother of two boys aged 12 and 13, Catherine describes some of the challenges involved along the way during her career.

When her second son was born, he was very ill and was in Crumlin Children's Hospital for many months.

"I was on leave and practically living in Crumlin Hospital, but after about ten or 12 weeks, I was getting calls from clients checking in on how things were going.

"I was sitting in the car in Crumlin carpark, taking business calls from clients. When clients need your input, you're either there and relevant or you're not, because life rolls on. It goes with the nature of the job as a transactional solicitor. It goes with the territory, and it's very hard to control it.

"I have worked hard over the last 20 years and have, fairly consistently, done long hours, 12 and 13-hour days. The work/ life balance is a tricky one," she says, because long hours are often what the market demands. A business meeting may finish at 6pm, with key points agreed, but the solicitor then has to put it down on paper and have it out the next morning.

But in relative terms, she concedes that solicitors are well-remunerated for the trade-offs and compromises.

> DESPITE THE CHALLENGES, PEOPLE ARE STILL SPILLING ENTHUSIASTICALLY INTO LAW AS A CAREER CHOICE, SHE SAYS, PRAISING THE MORE RECENT ALLIANCE OF LEGAL TRAINING WITH LANGUAGE, COMMERCIAL AND IT TRAINING

"I had thought that the market was ripe for it, that there were very good reasons to combine and consolidate, because there is strength in critical mass as clients' demands for legal services change."

Catherine attributes the lack of consolidation to the sturdy independent-mindedness of the Irish profession, particularly owners and partners with their own businesses. "The culture is quite different to other jurisdictions, where they are quite open to talk of mergers."

It is quite a different attitude in Ireland, where lawyers are very private about their business and cautious about even considering consolidation, Catherine observes. She also detects a considerable shift in consumer expectations, and a change in how they value or respect certain legal services.

The value attributed to certain legal input has declined to some extent, she believes. "Clients may not want to pay for the risk involved or expertise required to do things that are still complex and time-consuming. Some activities and processes have become commoditised, even though they are not any simpler than they were ten years ago."

Legal services must evolve and adapt in response, she says, and the introduction of so much regulation into the Irish market, across all industry sectors, is clearly an opportunity for lawyers. Ireland's significant levels of regulation are the response to some of the cataclysmic events that happened when there were insufficient controls, Catherine believes.

Yet, despite the challenges, people are still spilling enthusiastically into law as a career choice, she says, praising the more recent alliance of legal training with language, commercial and IT training.

Looking back on the financial crash, Catherine describes the national mood as "bad humour, with swathes of commercial developments stalled and halted by the banking crisis".

There was a lot of work done that never materialised into bricks and mortar because of the crash. "It was very stressful for those who were in the teeth of it," she says, describing those developers she dealt with as solid business people who were often dragged inadvertently into the fallout of the crash.

"A lot of people affected found and demonstrated phenomenal levels of resilience and bravery," she says, accepting that this may not be a popular view, and there are layers of complexity to what happened.

Ultimately, a lot of people held it together and did the right thing, and emerged stronger and wiser from the crash, including Catherine herself.

She sees the boom cycle repeating itself, but hopes that the Government will take the lead on positioning high-level and expensive projects outside of the capital.

The legal world will no doubt be watching Catherine's next move with interest. g

SLICE OF LIFE

Your 'turn-to person'?
No single person – I am lucky enough to be surrounded by lots of wise people, including my former master Jim Moran, my parents Kay and Al, and my husband David O'Riordan – all of whom are very different, and all of whom have been hugely influential.

Favourite pop management book or TED Talk?
One of my favourites is a recent one by a former ByrneWallace colleague and lawyer Simone George and her partner Mark Pollock, which was beautiful and was delivered eloquently, without a single note or prompt. I also found the TED Talk by Shonda Rhimes (creator of lots of well-known TV shows) fascinating on a few levels. The book *Death by Meeting* is a short snappy read about a favourite pastime of many lawyers.

Best business lesson?
We are better when we work together. Cash flow is also very important!

What do you do to chill?
I walk a very energetic dog. I spend some time on the edges of schools' rugby pitches watching energetic sons. I occasionally watch 'brain-candy' TV shows, which require no intellectual effort whatever. I am not saying which ones, as I would never live it down!

What are you reading?
I just completed John Boyne's *Ladder to the Sky* – I'm still thinking about what I think about it. I also read some of the *How to Train Your Dragon* series with the boys, and some bits are laugh-out-loud funny.

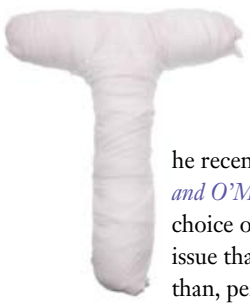
Best movie of all time?
I'm not an enormous movie fan – for years I loved *Moonstruck* (with Cher and Nicholas Cage) – now I don't know why I did!

Favourite alternative job?
I wanted to be a newsreader when I left school. I think that boat has sailed but, in another life, I might have ventured into journalism.

Different strokes

In which court should I issue proceedings? This is a question frequently faced by practitioners. A recent judgment should be of interest to all lawyers, but especially to personal injuries practitioners. **Patrick Marron** takes stock

PATRICK MARRON IS A DUBLIN-BASED BARRISTER



The recent Court of Appeal decision in *Moin v Sicika and O'Malley v McEvoy* means that the question of the choice of court in which to initiate proceedings is an issue that deserves a great deal more consideration than, perhaps, it was previously given.

Peart J's judgment was on foot of two separate appeals from the High Court. The issue that arose for determination was identical, and the appeals were heard together.

In both cases, the High Court had awarded the plaintiffs damages for personal injury that were comfortably within the jurisdiction of the Circuit Court. In *Moin v Sicika*, the plaintiff had been a passenger in a car when she sustained soft-tissue, lower-back injuries following a collision. She was awarded damages, to include special damages, of €41,305. In *O'Malley v McEvoy*, the plaintiff was awarded €34,808, to include special damages.

Both awards were on a full-liability basis, with no deductions for contributory negligence. Both proceedings had issued subsequent to January 2014, and the Circuit Court jurisdiction applicable to each claim was €60,000. It should be noted that – in each case – the defendant wrote to the plaintiff, well in advance of the hearing, stating that they were of the view that the proceedings had been brought in the wrong jurisdiction and stating their intention to seek a differential costs order.

At the conclusion of each trial, the judge awarded costs of the proceedings to the plaintiff on the Circuit Court scale, to include a certificate for senior counsel. In each case, counsel for the defendant made an application for a 'differential costs order', which was refused. The defendants appealed the refusal of those applications, and the Court of Appeal allowed those appeals.

This decision may have significant consequences in both existing and future litigation in most areas of civil litigation, but especially personal injuries.

AT A GLANCE

- A recent Court of Appeal decision may have significant consequences in both existing and future litigation in most areas of civil litigation, but especially personal injuries
- In each case, the defendants stated their intentions, well in advance of the hearings, to seek a differential costs order on the basis that they believed that the proceedings had been brought in the wrong jurisdiction
- In each case, applications for a 'differential costs order' were refused and subsequently appealed – the Court of Appeal allowed the appeals

Order in the court

The term 'differential costs order' is a colloquial one. It describes an order that can be made pursuant to section 17(5) of the *Courts Act 1981* (as amended by section 14 of the *Courts Act 1991*). The section provides that, where an order is made by a court in favour of a plaintiff, and that court is

PIC: REX FEATURES

> IT WILL BE INTERESTING TO SEE WHETHER SOME DEFENDANTS – INSURERS ESPECIALLY – WILL CONSENT TO THIS APPROACH, HAVING BEEN HISTORICALLY RELUCTANT TO ACCEPT UNLIMITED JURISDICTION IN THE CIRCUIT COURT

not the lowest court that could have made the order, the judge may make an order, if appropriate in all the circumstances, for the payment to the defendant of an amount equal to the difference between the costs of the proceedings and what the costs would have been had the proceedings been held in the lower court.

While Peart J gave some consideration to when a trial judge may measure the difference in costs and how the difference should be calculated at taxation, most of the judgment is concerned with an analysis of the discretion of the trial judge in refusing such applications, and the factors to be taken into account when exercising that discretion.

The court considered *O'Connor v Bus Atha Cliath* (2003) and *Savickis v Governor of Castlerea Prison* (2016) in arriving at its judgment.

It was submitted on behalf of the appellants that the default position should be that a differential costs order should be made unless the plaintiff could identify good reason otherwise.

Peart J accepted this reasoning and stated, at paragraph 21: "In my view, it is incumbent upon a trial judge, in circumstances where an award is significantly within the jurisdiction of a lower court, to make a differential order unless there are good reasons for not doing so."

He identified the starting point for a trial judge in deciding such applications as the legislative intent of the section to discourage litigation in a higher court than is necessary, and quoted Hardiman J in *O'Connor*: "Looking at section 17 as a whole, it seems clear that the legislative purpose is to provide a strong incentive to the institution of proceedings, generally, in the lowest court having jurisdiction to make the award appropriate to them. In this case, it is now beyond argument that the plaintiff's claim could have been dealt with quite adequately in the Circuit Court. This did not occur."

Peart J also quoted Irvine J in *Savickis*: "Why should a defendant have to face the expense of defending an action in the High Court when the relief to which the plaintiff was entitled fell comfortably within the jurisdictional limit of a lower court? Worse still, without the type of statutory disincentive provided for in section 17 of the 1981 act, a defendant who successfully defended such a claim might end up with an order for costs which they are unable to execute against the plaintiff and remain obliged to discharge the costs of having to meet the claim in the High Court."

Legislative purpose

In Peart's view, neither trial judge had sufficient regard for the legislative purpose of the section. Having given due regard to the legislative purpose of the section, the trial judge must then have regard to the circumstances of the case in exercising his/her discretion. Peart J found that, in each case, this was inadequate, with the relevant extracts from the transcripts in each set out in the judgment.

In the first case, the trial judge expressed the opinion that, given that the plaintiff suffered a back injury, it would have been negligent not to issue proceedings in the High Court. Peart J respectfully disagreed, particularly given that the jurisdiction of the Circuit Court is €60,000.

In the second case, the trial judge expressed his conclusions briefly, stating that

PIC: SHUTTERSTOCK

> MOST OF THE JUDGMENT IS CONCERNED WITH AN ANALYSIS OF THE DISCRETION OF THE TRIAL JUDGE IN REFUSING SUCH APPLICATIONS, AND THE FACTORS TO BE TAKEN INTO ACCOUNT WHEN EXERCISING THAT DISCRETION

"where the case was one from the outset that could merit a High Court award on one view of the case, it would be very difficult to expect a solicitor and junior counsel not to opt for the High Court jurisdiction". Similarly, Peart J disagreed, pointing out that, in each case, the plaintiff failed to achieve an award within the €60,000 jurisdiction by a considerable margin.

No consideration was given to the letters sent by both defendants warning of their view on jurisdiction and their intention to seek an order under section 17(5), as he held they were obliged to do so. In that regard, he commented that, on foot of receiving such a letter, a plaintiff would need to consider the possibility of having the case remitted to a lower court.

Interestingly, at this juncture, he points out that, as provided for in section 20 of the *Courts of Justice Act 1936* (as substituted by section 16 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*), where a case is remitted to the Circuit Court from the High Court, the Circuit Court has jurisdiction to award damages in excess of its monetary jurisdiction. However, he makes clear that the onus should always rest on the plaintiff to ensure that the proceedings are conducted in the appropriate court. While the warning letters sent in both cases were an important factor in the decision of the Court of Appeal, it is not clear whether such letters will be regarded as a prerequisite to applications under section 17(5).

In allowing the appeals, the Court of Appeal made an order in terms of section 17(5)(a) of the 1981 act, with the difference in costs incurred by the defendants to be assessed by the taxing master. The order further allows those costs to be set-off against the plaintiff's Circuit Court costs awarded in each case.

What to do?

There is no doubt that this is a watershed judgment for a lot of practitioners, and will have a major impact on a large volume of litigation that has already commenced. There can be no doubt that the area of practice that is most effected is personal injuries; however, the principles apply to all litigation where proceedings could have been brought in a lower court.

Practitioners who act for plaintiffs should be prepared to meet applications for differential cost orders if they fail to meet the jurisdiction of the lower court. Many will have received warning letters in this regard already, and many more such letters will issue on foot of this judgment. It is also an issue that is not confined to High Court litigation. Many plaintiffs have received letters advising that their Circuit Court claims are more appropriate to the District Court, and there are recent cases where defendants have been successful in applying for differential costs orders in the Circuit Court in Dublin.

Similarly, defence practitioners should be advising clients that, where they believe they are defending litigation in a higher court

than necessary, that a differential costs order is now a more realistic prospect and that any application will be bolstered by an early warning letter.

This judgment should be of interest to all lawyers, but especially so for personal injuries practitioners. It is important to note that the two cases appealed were 'straightforward' soft-tissue personal injury claims, where special damages were not a significant feature, and without other complicating factors such as further psychological *sequelae*, unresolved symptoms, or risk of future complications.

If there is a likelihood that a plaintiff will fail to meet the jurisdiction, and such other factors are not present, it should be asked whether an application for a differential costs order can be credibly opposed, and on what basis. In cases of pending High Court proceedings, if the answer is 'no', consideration should be given to writing to the defendant and asking them to consent to remitting the matter back to the Circuit Court with unlimited jurisdiction. It will be interesting to see whether some defendants – insurers especially – will consent to this approach, having been historically reluctant to accept unlimited jurisdiction in the Circuit Court. In any event, if warning letters are sent in relation to this issue, they should not be ignored.

Likewise, for proceedings that have yet to be commenced, the issue of jurisdiction needs increased scrutiny. It may be prudent to issue proceedings in a lower court and make a further application to transfer if the case merits it. It remains to be seen whether a successful application to transfer, for example, from the Circuit Court to the High Court (where a county registrar or Circuit Court judge has assessed the case and deemed it appropriate for the higher court) would be a sufficient reason for a judge to refuse a differential costs order.

Practitioners must also be aware, and plaintiffs must be advised, that the financial consequences can be immediate, with the provisions of section 17(5)(b) allowing for the differential costs to be set off against the costs due to the plaintiff.

LOOK IT UP

CASES:

- *Moin v Sicika and O'Malley v McEvoy* [2018] IECA 240
- *O'Connor v Bus Atha Cliath* [2003] IESC 664; [2003] IR 459
- *Savickis v Governor of Castlerea Prison* [2016] IECA 372; [2016] 3 IR 292

LEGISLATION:

- *Courts Act 1981*, section 17(5), as amended by section 14 of the *Courts Act 1991*
- *Courts of Justice Act 1936*, section 20, as substituted by section 16 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*

Rebels without a cause

Recent legislation provides for a statutory legal framework for High Court special care litigation, and has implications for the Child and Family Agency and other parties to special care applications. **Conor Fottrell** explains

CONOR FOTTRELL IS A PARTNER IN MASON HAYES & CURRAN, SPECIALISING IN PUBLIC LAW LITIGATION, INCLUDING CHILD AND FAMILY LAW

The *Child Care Act 1991* has now been revised and updated to include provisions relating to special care. All applications are on a statutory footing and brought under the amended act, along with new *Rules of the Superior Courts*.

Special care applications are dealt with in the High Court minors' list on a weekly basis. It is an area of practice that might be unknown to some, but it is arguably the most complex and difficult of lists in the High Court, dealing with extremely vulnerable and high-risk young children.

Special care involves the civil detention of minors whose behaviour places them and others at risk, and when all other efforts to accommodate the young person within the community have been exhausted by social workers and residential staff. Special care provides short-term, stabilising, and safe care in a secure therapeutic unit.

Young people placed in special care are among the most vulnerable group of minors in the care of the State. Many of these children have suffered some traumatic early life experiences, with exposure to neglect, physical/emotional or sexual abuse, and engagement with alcohol and drug use.

Given the restriction on the young person's liberty, a placement in special care is made pursuant to a High Court order. It is an exceptional order, which is only made when there is a serious risk to the life or welfare of a minor. Prior to the introduction of the legislation in 2018, these cases were dealt with, for many years, under the inherent jurisdiction of the High Court.

Following the introduction of the original *Child Care Act* in 1991/92, it became clear that there was a cohort of 'out-of-control' young children whose behaviour was such that they could not be managed within the usual care system, including foster care or residential care. In response, a number of specially adapted units were set up to place these children, including Ballydowd (Dublin), Coovagh House (Limerick), and Gleann Alainn (Cork). In 2017, another facility was opened in Co Dublin – Crannog Nua. The Child and Family Agency plans to redesignate the purpose and function of Gleann Alainn late in 2018.

AT A GLANCE

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- Given the restriction on the young person's liberty, a placement in special care is made pursuant to a High Court order. It is an exceptional order, which is only made when there is a serious risk to the life or welfare of a minor

Special care legislation

SI 637 of 2017 commenced the relevant provisions of part IVA of the *Child Care (Amendment) Act 2011*, updating the *Child Care Act 1991* by inserting new provisions into section 23 that contain a power to detain minors in special care units by the High Court.

Section 23(c) provides for a definition of special care as "the provision to a child, of (a) care which addresses his/her behaviour and the risk of harm to his/her life, health,

PIC: REX FEATURES

YOUNG PEOPLE PLACED IN SPECIAL CARE ARE AMONG THE MOST VULNERABLE GROUP OF MINORS IN THE CARE OF THE STATE. MANY OF THESE CHILDREN HAVE SUFFERED SOME TRAUMATIC EARLY LIFE EXPERIENCES

> SPECIAL CARE APPLICATIONS REPRESENT AN AREA OF PRACTICE THAT MIGHT BE UNKNOWN TO SOME, BUT IT IS ARGUABLY THE MOST COMPLEX AND DIFFICULT OF LISTS IN THE HIGH COURT

safety, development or welfare, and his/her care requirements; and includes medical and psychiatric assessment, examination and treatment, and educational supervision".

The definition of special care refers to a care provision that will address the behaviour, risk of harm, care requirements, and educational supervision. Interestingly, there is no mention in the definition of special care of there being a requirement for a therapeutic rationale. Prior to the legislation being introduced, it was a given that an application for special care must be based on a therapeutic rationale for detention. While not specifically mentioned in the definition, it is clear that a therapeutic rationale is a theme that runs consistently through the case law.

The legislation provides for the agency to apply for a special care order or interim special care order on notice to parent(s) having custody of the child or legal guardian. On application for a special care order, the High Court will appoint a guardian *ad litem* to advocate the views of the child in the proceedings. Once a special care order is made, it can be granted for a period of up to three months, with monthly reviews taking place in the High Court minors' list. There is a provision in sections 23(g), (h) and (i) to extend the special care order for a maximum of two further periods of three months each.

Advance process

There is a further requirement on the agency to inform An Garda Síochána in advance of any application for a special care order. When a special care order has been made, the High Court will (if necessary) for the purposes of executing the order, direct members of An Garda Síochána to locate the young person and bring them to the special care unit and into the custody of the agency.

One of the key provisions of the legislation sets out a process to be complied with by the Child and Family Agency in advance of any application for a special care order. Section 23(f) provides for the agency to carry out a consultation with the young person and relevant family members and the holding of a family welfare conference.

Section 23(f)(8) states: "Where the agency determines that there is reasonable cause to believe that, for the purposes of protecting the life, health, safety, development or welfare of the child, the child requires special care, the agency shall apply to the High Court for a special care order."

This introduces a mandatory obligation on the agency, where it determines that a child requires special care, that the agency shall apply to the High Court for a special care order. Previously, an application would not have been brought before the courts until there was a bed available in one of the special care units.

At the present time, special care units are not operating at full capacity due to a number of challenges. One of those challenges arises in managing these units, where staff can be faced with the threat of physical assault, property damage, and minors absconding on a regular basis. There exists a high turnover of staff, staff on long-term sick leave, and general difficulties in recruiting staff to work in this environment.

Crannog Nua, Co Dublin

Arising from the provisions of section 23(f)(8) of the act, the agency could now potentially find itself in a position where it has reached the necessary determination that a young person requires special care. In those circumstances, the agency is obliged to apply for a special care order, but the reality may be that there are no beds available in any of the special care units. If such a scenario were to arise, the agency with responsibility for the most vulnerable group of young people in State care would not be in a position to comply with its statutory duty.

The ramifications of this for the agency could not be more serious. What can the agency do in these circumstances? Does it fail to comply with a mandatory obligation to apply for a special care order on foot of having reached the necessary determination? Or does it proceed and apply to the High Court for a special care order in the full knowledge that there is no bed available at the time of the application, and request the High Court to hold off on making an order until such time as a bed becomes available?.

Clearly this is a most unsatisfactory situation, which needs to be reviewed. Further, there is the added potential exposure to costly litigation against the State arising from this section.

Judgment

In a recent High Court judgment in *CFA v TN & NR*, Ms Justice Reynolds (who was dealing with the minors' list at the time)

dealt with difficulties that arose when a minor was transitioning out of special care. The court addressed the wider issue of the lack of available placements in special care and the availability of onward stepdown placements from special care.

At the time of the judgment, the Child and Family Agency operated four special care units with a capacity for up to 29 children. The High Court in its judgment stated that there are currently "up to 14 mixed-gender places available in special care for children aged between 11 and 17 years". While noting that a new specially adapted care facility opened in late 2017 for up to 12 young people, it was operating at "less than 50% capacity". The court stated: "At a time when there is an ever-increasing and unprecedented demand for placements in special care, it appears incomprehensible why this facility is not operating at full capacity."

Judge Reynolds went on to look at the reasons why special care units are not operating at full capacity. She noted that "having heard evidence from the CFA on this issue, it is readily apparent that the difficulty is in relation to the recruitment of appropriately qualified staff, given the constraints on financial resources. The agency has sought sanction from the department to address the matter by seeking to make the vacant positions more financially attractive, and a response is awaited from the department."

Proper resources

The introduction of this long-promised legislation dealing with a very complex and difficult area of law is to be welcomed. The legislation has provided a much-needed statutory legal framework for special care. The standards in special care units, along with a requirement of registration of special care units, have further been put on a statutory footing.

However, it is clear that, if the Child and Family Agency is to comply with its statutory obligations, there needs to be proper and adequate resources provided in this area.

It is noteworthy that, in the conclusion to her recent judgment, Ms Justice Reynolds stated: "It is clear the CFA faces a number of challenges in relation to meeting the needs of extremely vulnerable children who place themselves at significant risk of harm. In light of the statutory duties now placed on it pursuant to the recent enactment of legislation and the very grave issues raised by this court, I will direct that a copy of this judgment be furnished to the department so that these matters can be brought to the urgent attention of the minister."

LOOK IT UP

CASES:

- *CFA v TN & NR* [2018] IEHC 651; 2018 no 1972p

LEGISLATION:

- *Child Care Act 1991*
- *Child Care (Amendment) Act 2011*
- *Rules of the Superior Courts (Special Care of Children) 2018* (SI 63 of 2018)

The first triumvirate

The first women joined the solicitors' profession in Ireland in the 1920s. Now, women constitute more than half the profession. **John Garahy** tells the tale of the first three trailblazers

JOHN GARAHY IS A RETIRED SOLICITOR WHO HAS COMPLETED AN MPHIL IN MODERN IRISH HISTORY

On 30 November 1908, Enda B Healy (auditor of the Solicitors' Apprentices Debating Society) addressed the AGM on the topic 'Women's suffrage'. He predicted that women would be enfranchised, contemplating at some future time that they would be lawyers, perhaps even judges.

The Common Law precluded women from acquiring their own legal identity and capacity for centuries, including entry to the legal professions. World War I was the catalyst for change. The *Sex Disqualification (Removal) Act 1919* enabled women to enter the legal and other professions on the same conditions as men.

There were attempts by women to enter the solicitors' profession prior to the act, with proceedings issued in 1914 by Gwyneth Bebb and three companions. In *Bebb v Law Society*, the Court of Appeal in England and Wales held that "a woman was not a person within the meaning of the *Solicitors Act 1843*". Thus continuing the Common Law prohibition on women.

Madge Anderson in Scotland was the first woman law graduate from Glasgow University in 1917 and, on graduation, she became indentured for three years. Thus, in 1920, she applied for admission as a law agent (solicitor) but was refused as she was not a man. She issued proceedings, *Anderson A Petitioner*, and was successful on appeal. Lord Ashbrook held that "the act of 1919, in this matter of admission to the legal profession, has put the petitioner in the position of a man". He directed her admission, the first woman admitted as a solicitor in these islands. The jurisprudential position of a woman evolved from the 1914 decision, that a woman was not a person, to the 1920 decision that a woman is in the position of a man.

Once the royal assent to the 1919 act was given (23 December 1919), the Law Society of Ireland took a pragmatic decision to admit women. The February 1920 Council meeting recorded that two women had lodged applications. Gamble, the president of the Society for 1920/1, remarked: "Its developments will be viewed with considerable interest and curiosity, and already lady candidates have entered upon the course of study and training".

The two women were Mary D Heron from Downpatrick, indentured to her uncle TM Heron, Belfast, on 7 February 1920, and Helena M Early from Swords, indentured to her brother Thomas Early on 22 June 1920. The third woman indentured was Dorothy Mary O'Reilly (née Browne) from Skibbereen on 5

AT A GLANCE

- Mary Heron was the 'first lady solicitor' in Ireland. She practised from 1923-46, but did not take out a practising certificate
- Helena Early was a law clerk when apprenticed, came first in the Preliminary Examination in 1920, was the first woman commissioner for oaths, and was president of the Ireland-USSR Friendship Society
- Dorothea O'Reilly received the Silver Medal in the Final Examination, was admitted to the Roll in 1924, and co-founded the Dublin firm PF O'Reilly & Co

Ironic pedantic note

Though originally referring to the famous trio of male politicians in ancient Rome, the word 'triumvirate' in its non-historical sense is now regarded as gender neutral

PIC: REX FEATURES

> THIS LIBERATION MOVEMENT IS TAKING TOO LONG. WOMEN SHOULD BE FAR MORE ACTIVE THAN THEY ARE. THEY'VE BEEN UNDERESTIMATING THEMSELVES FOR TOO LONG

November 1921, to Jasper Travers Wolfe, one of the most remarkable solicitors of his generation. Two of the three were apprenticed to family members, confirming the familial entry to the profession in the 1920s.

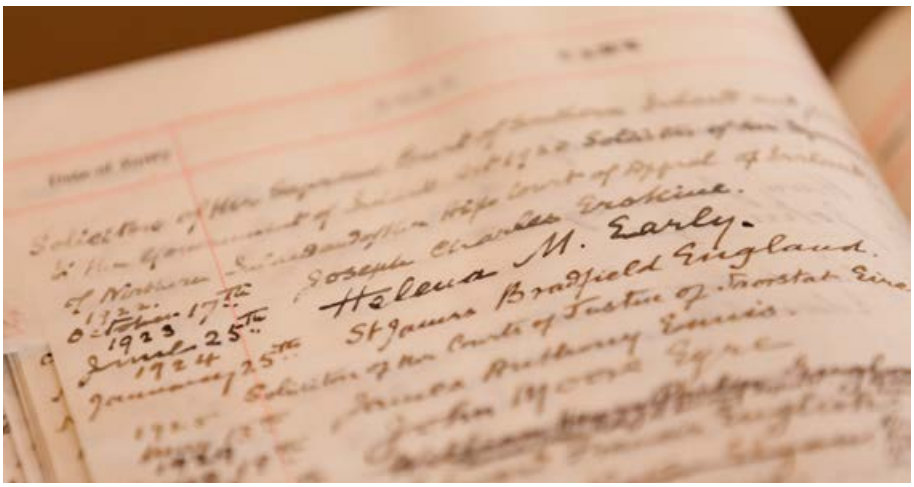
Partition of the legal and political jurisdiction of Ireland occurred on 1 October 1921, with the commencement of the *Government of Ireland Act 1920*. Thus, Heron and Early were entitled to practice in both jurisdictions, and O'Reilly in the Irish Free State only, as her indentures post-dated 1 October 1921. The standard apprenticeship term was five years, but Heron, as a graduate of Queen's University, was entitled to a reduced term of three years, as were Early and O'Reilly, who were law clerks.

Mary Dorothea Heron

Heron's achievement as the 'first lady solicitor' in Ireland received recognition in her native Belfast, where three newspapers

PICS: CIAN REDMOND

Mary Dorothea Heron's name on the Roll of Solicitors, 17 April 1923



Helena M Early's name on the Roll of Solicitors, 25 June 1923

carried a report of her success on Saturday 3 February 1923. The *Belfast Telegraph* noted her academic success in Victoria College and Queen's University, that she was placed second in the Final Examination, and was awarded "a special certificate for distinguished answering, being the first lady solicitor in Ireland". She was described by reference to her male progenitors: "Miss Heron is the daughter of Mr James Heron M Inst Tech, and a granddaughter of the late Professor Heron DD. She served her apprenticeship with her uncle, Mr TM Heron, solicitor, Mayfair, Belfast."

She started practice with him on admission, practising from 1923-46, but did not take out a practising certificate. The explanation is provided by Teri Kelly ('Profession's perfect parity', *Gazette*, Jan/Feb 2015, pp20-1): "There was a perception in these early years that women solicitors were engaged as assistants in conveyancing or probate work – many women did not hold practising certificates, which was a convention permitted by the Law Society at the time."

This convention applied in both jurisdictions until 1974, and extended to include male assistant solicitors who did not attend court. The Law Society of Northern Ireland does not have any record of Heron. It also allowed Helena M Early to be the first woman practising solicitor in Ireland, and Kathleen Donaghy the first woman practising solicitor in Northern Ireland. Heron retired in 1946 and died at Portstewart on 9 October 1960, aged 64.

> HE RECOUNTS THE NARRATIVE OF THE PROPOSED AMBUSH OF JASPER TRAVERS WOLFE, ADDING THAT HIS GRAND-MOTHER 'WAS HOLDING HIS GUN'

Helena M Early

The contrast with Heron is that Early was a law clerk, aged 32, when apprenticed to her brother – which means that she had considerable experience. She was placed first in the Preliminary Examination in May 1920 and was joint first in the Intermediate Examination in June 1921. Another first was her appointment as the first woman commissioner for oaths by the Lord Chief Justice in January 1922, while an apprentice.

In an interview with the *Irish Independent* on 5 November 1970, titled 'Too late for liberation?', Early declared: "This liberation movement is taking too long. Women should be far more active than they are. They've been underestimating themselves for too long." She was 83 at the time of the interview, reported to smoke 60 cigarettes a day, and "fell in love with her job" and did not marry. She "took up" law in her brother's office when she was 16. She recounted her election as auditor of the Solicitors' Apprentices Debating Society for 1921/2, saying the men were not too pleased, but they accepted her and she enjoyed her time in office. The next woman auditor, Kathleen Ryan, was not elected until 1970, with *The Irish Times* carrying a photograph of both that year.

She practised with her brother at 63-4 O'Connell Street, in the courts (particularly the District Court), and was a familiar figure. She combined practice with left-wing political activism. She was president of the Ireland-USSR Friendship Society, which was in existence between 1945 and 1966, with the purpose "to combat all falsehoods designed to misrepresent the

> SHE WAS PLACED SECOND IN THE FINAL EXAMINATION AND WAS AWARDED 'A SPECIAL CERTIFICATE FOR DISTINGUISHED ANSWERING, BEING THE FIRST LADY SOLICITOR IN IRELAND'

peaceful aims of the Soviet Union".

Her first entry in the *Law Directory* was in 1924, with her last entry in 1971, then aged 84. Recreation for her was bridge, and she "had won major competitions in the past". Exercise was a game of golf at Milltown. She concluded the interview by stating that she works because she likes to "keep her hand in".

Her concluding remarks are indicative of the year they were made – 1970: "Women make very good solicitors. There is nothing to stop them working even if they are married."

She died on 1 August 1977 at Blackrock.

Dorothea Mary O'Reilly's name on the Roll of Solicitors, 17 November 1924

Dorothea Mary O'Reilly

Dorothea Mary O'Reilly was admitted to the Roll under her maiden name of Browne, the entry was amended following her marriage to 'DM O'Reilly', which is the name by which she became known.

She worked as a law clerk for one of the most remarkable Irish solicitors, Jasper Travers Wolfe, Skibbereen, Co Cork. A Methodist and Crown solicitor in West Cork, he was the subject of IRA animosity – they attempted an ambush on him in his car. She became indentured to him on 5 November 1921, aged 28.

She emulated the first two women's achievements, receiving the Silver Medal in the Final Examination. She was admitted to the Roll on 17 November 1924. She met Patrick F O'Reilly, a fellow apprentice, whom she married. They founded a firm in Dublin (PF O'Reilly & Co), which continues in practice with her grandson Peter O'Reilly as the third-generation solicitor. Peter O'Reilly said that his grandmother practised all her life, specialising in property. He recounts the narrative of the proposed ambush of Jasper Travers Wolfe, adding that his grandmother "was holding his gun". He also recounts that O'Reilly was ranked higher than her husband in the examinations, who contended "he was beaten by love". Her husband was in politics, serving in the Senate from 1951-4. She retired in the 1960s and died on 26 March 1973, survived by her husband and three sons.

The advent of these three women to the profession acted as a beacon to subsequent generations. But very few women entered the profession in the ensuing decades, with two in 1925 (Early and O'Reilly) out of a total of 999. In 1930 there were nine, 1940 had 27, 1950 had 44, 1960 had 62, 1970 had 71, and the year 1980 had 359 women and 1,791 men. The figures for 2017 show women as the majority: 5,001 to 4,664.

FOCAL POINT

PRACTISING CERTIFICATES BY GENDER

PCs	Total	Men	Women
1923	1,397 (INCL NI)	1,397	0
1925	999	997	2
1930	1,032	1,023	9
1940	1,420	1,393	27
1950	1,374	1,330	44
1960	2,122	1,960	62
1970	1,349	1,278	71
1980	2,150	1,791	359
1990	3,539	2,593	946
2000	5,527	3,386	2,141
2010	8,326	4,402	3,924
2014	9,232	4,609	4,623
2017	9,665	4,664	5,001

The second sex

The revolution in Ireland – according to Kevin O'Higgins, vice-president of the Executive Council of the Irish Free State – was conducted by the most conservative revolutionaries, borne out by the restrictive and discriminatory legislation enacted against women. Successive Free State governments recognised and propagated the idea of women's place in the home. Additionally, there was a dearth of legal work: Eugene Sheehy, in *May It Please the Court* (1951), recounts attending Kilkenny Circuit Court in the 1930s, when there was one case with 23 barristers present.

Women now comprise 52% of the profession. The Law Society stated: "To our knowledge, this is the first time a female majority has existed in any legal profession in the world."

Maud Crofts, the second woman solicitor in England and Wales, provided a coherent and compelling explanation of women's expectations: "We women want not privileges but equality." g

WHEN A DIRECTIVE NEEDS TO BE MORE … DIRECTIVE

Over ten years since its adoption, the *Mediation Directive* is far from achieving its stated objectives. **James Kinch** says it's good to talk

JAMES KINCH IS A SOLICITOR IN THE CHIEF STATE SOLICITOR'S OFFICE

THE ITALIAN EXPERIENCE PROVIDES A CONCRETE EXAMPLE FOR THE PROPOSITION THAT INTRODUCING MANDATORY ELEMENTS WILL LIKELY INCREASE THE NUMBER OF MEDIATIONS IN ANY MEMBER STATE

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

A recent report from the European Parliament (PE 608.847 – November 2018) on the impact of Directive 2008/52/EC (the *Mediation Directive*) in the EU shows that, over ten years since its adoption, the directive is far from achieving its stated objectives of encouraging the use of mediation and, in particular, of achieving a 'balanced relationship between mediation and judicial proceedings'.

The directive does not prescribe a particular balance or state how to determine whether a 'balanced relationship' has been achieved, simply providing that "the objective of this directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings" (article 1.1). The report sets out the findings of studies concerning the use of mediation in the member states and makes some notable observations regarding how best to achieve the directive's objective, in particular, citing Italy's mandatory 'opt-out' approach.

Report findings

In 2011, three years after the enactment of the directive, the European Parliament commissioned a study (*Quantifying the Cost of Not Using Mediation*) to measure the impact of the *Mediation Directive*. The report observes that the results were disappointing, showing that, of the top countries that were top performers in terms of numbers of mediations, a majority of these countries were experiencing around 2,000 or fewer mediations per year. A further study was conducted at the end of 2013, which showed that only four countries – Italy, Britain, the Netherlands and Denmark – reported more than 10,000 mediation cases. The majority of the countries (13) reported less than 500 cases per year. Only one country registered around 200,000 mediation cases per year (Italy), which is also the only country to have adopted an opt-out mediation model (see below). That study also required respondents to indicate what they thought would be the single most effective legislative measure to increase the number of mediations. The majority of respondents indicated, with one exception, that no current legislative measures in place to promote mediation were seen as particularly effective. For example, the study showed that confidentiality protection does not appear to increase the number of mediations. In fact, the majority of respondents from all EU member states, even those with less than 500 mediations per year, reported strong confidentiality protection in their countries. In addition, countries that implemented incentives for people to mediate failed to see an increase in the number of mediations. The 2013 study reveals that the regulatory features currently in place to promote mediation are not decisive factors in favouring the use of mediation. However, responses to that same question showed that the introduction of a mandatory system would be desirable and did correspond to a higher frequency of mediations taking place.

Recourse to mediation

As to recourse to mediation, it is notable that article 5.2 of the directive provides: "This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system". It follows that member states are permitted to provide for mandatory mediation provided that that does not prevent the parties from exercising their right of access to the courts. The report observes that Italy is the only member state to have adopted an opt-out mediation model, applicable to about 15% of all civil and commercial cases.

PIC: SHUTTERSTOCK

The report states that, in Italy before 2011, despite pro-mediation legislation that was in force since 1993, there were virtually no commercial mediations (either mandatory or voluntary). Things changed dramatically in 2011, when a government decree made mediation a condition precedent to trial in certain cases, including banking and insurance contracts, real estate, medical malpractice, and a few others. With the decree, several hundred thousand mediations were started on an annual basis, 20% of which were voluntary cases. In late 2012, however, the rate of mediations declined drastically from 200,000 to a few thousand per year when Italy's Constitutional Court ruled that a parliamentary statute was needed – not a governmental decree – to require litigants to try mediation before going to court. The constitutionality *per se* of mandatory mediation was thus not addressed by the decision, which left the matter in the hands of the legislators. Italy reintroduced the mandatory requirement. This time it was done by way of an act of parliament, with another notable change: Italy removed the obligation to go through, and pay for in advance, a full mediation process in the above-mentioned categories of cases. Under the new law, parties must participate at the first meeting with the mediator; if not, they can both face certain sanctions. However, at the first meeting, either party may stop the mediation immediately, by paying only a nominal fee (from €40 to €80). Under this system, Italy has since been experiencing upwards of 150,000 mediations a year, bearing in mind that the obligation to attempt mediation first only applies to less than 10% of the country's civil litigation cases.

The report suggests that, in effect, the Italian experience provides a concrete example for the proposition that introducing mandatory elements, more specifically mandatory mediation with the ability for parties to opt out easily, will likely increase the number of mediations in any member state. It also observes that experience has also shown that the incidence of voluntary mediation is increased by the introduction of mandatory mediation when provided in a single regulatory framework.

The European Parliament was presented with a proposal to adopt the 'opt-out' mediation model in late 2016; however, in 2017, the parliament decided to leave the directive unchanged. The report nonetheless argues that, instead of a simplistic binary option of voluntary mediation or mandatory mediation, the 'required mediation model with easy opt out' offers a more thorough and refined analysis and appears to produce far better results. g

> THE 'REQUIRED MEDIATION MODEL WITH EASY OPT OUT' OFFERS A MORE THOROUGH AND REFINED ANALYSIS AND APPEARS TO PRODUCE FAR BETTER RESULTS

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REPORTS OF THE LAW SOCIETY COUNCIL MEETINGS

5 OCTOBER, 9 NOVEMBER AND 7 DECEMBER 2018

Motion: Gender equality, diversity and inclusion

At its meetings on 5 October and 7 December, the Council debated a motion on the establishment of a Task Force on Gender Equality, Diversity and Inclusion, which was unanimously approved at the December meeting in the following terms:

"*1) That this Council agrees that the president should appoint a task force:*

a) To draft a gender equality, diversity and inclusion policy for the Council, bodies, and representatives under the aegis of the Society, and the leadership thereof, to promote gender equality, promote diversity and inclusion in order to ensure that all solicitors feel valued, respected and supported within the Society's Council, committees and other bodies,

b) To consider and make recommendations that would encourage more female solicitors and solicitors from diverse backgrounds to seek election to the Society's Council, to participate in bodies and representation under the aegis of the Society, and the leadership thereof,

c) To draft appropriate amendments to the Code of Conduct for Council Members *to reflect the new policy, and that*

d) The task force should report back to the Council at its meeting on 12 July 2019.

2) In addition, the task force shall create tools that the profession can use to promote gender equality, diversity and inclusion within their firms."

Proposed: Maura Derivan
Seconded: Brendan Twomey

Motion: *Compensation Fund Regulations*

"*That this Council approves the* Solicitors (Compensation Fund) Regulations 2018."
Proposed: Martin Crotty
Seconded: Maura Derivan

At its November meeting, the Council approved regulations that (a) changed the statutory time-limit for making a claim on the compensation fund from six months to 12 months, (b) enabled the Society to request a claimant to bring the facts of their claim to the attention of An Garda Síochána, and (c) updated the Compensation Fund Claim Form.

Taking of office

At its November meeting, the outgoing president, Michael Quinlan, thanked the Council for its support during the past year. He also thanked the director general and staff for their assistance, and he wished the incoming officers all the best for the coming 12 months.

Patrick Dorgan was formally appointed as president. He said it was a great honour to accept the office and to follow in the footsteps of so many accomplished and erudite presidents. He paid tribute to Michael Quinlan, who was hugely popular with his colleagues and who had filled the presidential shoes once filled by his mother, Moya, with great energy and distinction.

He committed to focusing during his year on the formulation of a diversity and inclusion policy, on the education system for the solicitors of the future, and on planning for appropriate development of the Benburb Street site.

The senior vice-president Michele O'Boyle and the junior vice-president Dan O'Connor then took office and thanked the Council for the honour of electing them.

Legal Services Regulation Act

The Council noted submissions made by the Society's task force to the LSRA on limited liability partnerships and on legal partnerships, and also noted a report, with attached review, by Hook Tangaza, issued by the authority on legal education and training. It was agreed that the Society would engage with the proposed symposium on legal education and training that would be held by the authority in due course, and that the Society would press ahead with its own reforms on legal education and training, as

outlined in its submission to the authority.

Personal injuries

At its October meeting, the Council noted the contents of the *Second and Final Report of the Personal Injuries Commission*, which recommended that the Judicial Council should be tasked with preparing guidelines and recalibrating the *Book of Quantum*. The Council agreed that there was no evidence that reducing the level of compensation awards would result in a reduction in insurance premiums. The insurance industry campaign against compensation awards continued through November and December, and the Society was represented in the print and broadcast media by the director general and past-president Stuart Gilhooly.

Market study

At its meeting on 7 November, the Council received a presentation from Crowe Howarth on the findings of the Market Study of Sole Practitioners and Smaller Practices, together with their recommendations for the Society, for the firms themselves, and for collaboration between the Society and the firms. It was agreed that a communication and implementation plan should be devised for 2019, so that a copy of the study would be circulated to all practices, and the Society would commence implementation and discussion within the profession on the findings and recommendations.

PII

The Council was briefed at each of its meetings by the chair of the PII Committee Richard Hammond, on the PII renewal season, the insurance companies joining and leaving the market, market share by firm, the uncertainty caused by Brexit, the Common Proposal Form and updated guidance notes.

Anti-money-laundering

At its November meeting, the Council noted the new obligations contained in the *Criminal Justice (Money-Laundering and Terrorist Financing) (Amendment) Act 2018*, which would be commenced by ministerial order on 26 November 2018. The act introduced statutory requirements for every firm to (1) conduct and maintain a written business risk assessment on their own firm, (2) have written AML policies, controls and procedures, and (3) conduct and maintain a written customer/client risk assessment for every client over the course of the business relationship.

The Council noted, with approval, the supports for members that had been devised by the Society's AML Task Force, including updated guidance notes, infographics and adaptable templates, all of which would be disseminated to the profession by Presidential eBulletin.

Practising certificates 2019

At its December meeting, the Council approved the practising certificate form for 2019 and set the fee for 2019 at €2,650, with a fee of €2,280 for those qualified less than three years. The Council noted that €287 of the fee related to the LSRA Levy Fund, and €50 represented a doubling of the contribution to the Solicitors' Benevolent Association.

PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

UNDERTAKINGS, NON-RESIDENT PERSONAL REPRESENTATIVE AND PROBATE PRACTICE

Practitioners are reminded that, as soon as a grant of representation issues, the personal representative is absolutely entitled to receive the proceeds of any funds in any bank or other financial institution.

A solicitor acting for such personal representative(s) should, therefore, be extremely cautious in giving any undertaking concerning such funds and should avoid doing so wherever possible.

Prior to giving any such undertaking, the solicitor should obtain from each of the personal representatives the usual irrevocable authority to act and an irrevocable instruction to the financial institution concerned that the funds can only be paid through the solicitor's office.

This instruction should be then forwarded to the financial institution concerned, and confirmation should be obtained from them that they will only release the proceeds through the solicitor's office.

This should also be done where the solicitor is acting as agent for a non-resident personal representative. In such cases, under section 48(10) of the *CAT Consolidation Act 2003* (as inserted by section 147(1) (l) of the *Finance Act 2010* and further clarified by section 115 of the *Finance Act 2012*), the solicitor shall be assessable and chargeable for the tax to the same extent as the beneficiary.

In all such cases, this should be done as soon and as early as possible after the issue arises.

CONVEYANCING COMMITTEE

RECEIVER CONTRACTS

The Conveyancing Committee regularly receives queries from practitioners in relation to receiver contracts.

The committee is cognisant of the fact that receivers, given the nature of their role, have limited knowledge in relation to the property in sale and wish to exclude personal liability.

It is the view of the committee that the contract for sale furnished by a receiver should be reasonably balanced between the protections provided to the receiver in the context of the sale and the rights afforded to a purchaser.

The absolute exclusion of representations and warranties, such that the purchaser receives no protection whatsoever, is not appropriate. Given the extent and variety of the special conditions usually set out in receiver contracts, it is not possible to deal with each condition in this note.

The committee would remind practitioners of its practice note 'Purchasing from liquidator or receiver' (as far back as September 1986), which sets out the documentation that should be received when purchasing from a receiver.

The committee has decided to provide a more general guidance, and refers practitioners to previous practice notes on this topic where specific conditions were addressed:

- 1 December 2017 – 'Receiver contract special condition unacceptable',
- 2 June 2017 – 'No recourse condition in receiver contracts', and
- 6 June 2014 – 'Conditions of sales by receivers/mortgagees'.

The view of the committee in relation to specific matters brought to its attention is set out below:

1) While the receiver wishes to exclude some of the warranties contained in the general conditions insofar as they relate to the property, he/she should be willing to confirm matters insofar as it is within his/her knowledge, information and belief, and from the date of his/her appointment, and produce with the contract the best title available.
2) A receiver will wish to exclude personal liability and, subject to paragraph 5 (below) and similar matters, this is acceptable.
3) Provisions whereby a purchaser indemnifies the receiver in respect of third-party rights or claims should not, save in exceptional circumstances, be accepted. This type of provision would only be appropriate in very limited cases, for example, where contents in the property are included in the sale and/or a possessory title only is being sold. The condition should be specifically limited in effect to those matters.
4) Special conditions that prevent a vendor from being bound by a contract prior to completion, while at the same time binding a purchaser, should not be accepted. If, for whatever reason, the vendor is not to be bound until completion, then the committee recommends that the purchaser should equally not be bound until completion.
5) Where there are Local Property Tax (LPT), Non-Principal Private Residence (NPPR) and/or Household Charges outstanding, the correct procedure is always, in accordance with the statutory requirements, that the appropriate evidence of discharge is provided on or prior to closing.

Section 8A(3) of the *Local Government (Charges) Act 2009* and section 10(3) of the *Local Government (Household Charge) Act 2011*, respectively, provide that a vendor (defined in section 8A(8) of the 2009 act and in section 10(8) of the 2011 act as including an agent of the vendor receiving proceeds of sale or advising the vendor on the transfer of property), such as a solicitor or a receiver selling as agent, shall pay any NPPR and Household Charge prior to completion of a sale.

It is an offence under section 8A(6) of the 2009 act and section 10(3) of the 2011 act for a vendor (as defined) to fail to discharge NPPR and/or Household Charge prior to closing.

Section 8A(4) of the 2009 act also provides that a vendor (as defined) shall furnish a certificate of discharge, exemption or waiver from NPPR, as appropriate, to a purchaser on or prior to closing.

In the case of LPT, section 126 of the *Local Property Tax Act 2012* provides that a liable person shall pay any unpaid LPT before completion of a sale.

Notwithstanding same, the

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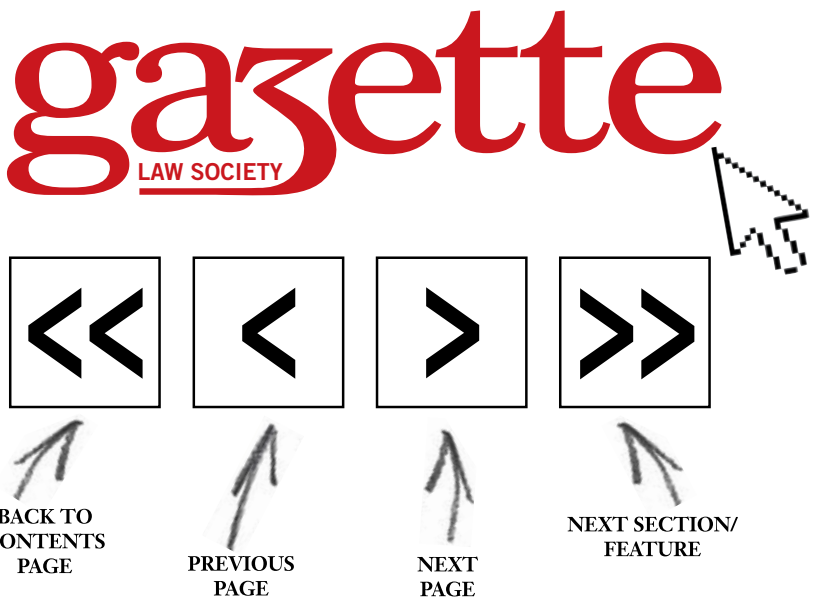

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committee is aware that, in practice, these liabilities are often discharged from the proceeds of sale. In such cases, practitioners are reminded of the offences under the relevant legislation, and the committee recommends that, where such liabilities are to be paid from the proceeds of sale, an appropriately drafted undertaking be agreed to address same. Given the already increasing burden on solicitors today, the committee is not minded to suggest that our members provide these undertakings that are now frequently offered by the receiver. Where an undertaking is to be provided by a receiver, it should be clear as to its terms, in particular in relation to time. Limitation of liability language should not be included in such an undertaking. The receiver is personally liable under a receiver undertaking. The contract should make this clear, particularly if there is a general exclusion of receiver liability.

6) On a sale of unregistered title, the receiver should provide a Land Registry compliant map to facilitate the lodgement of the first registration application. While the receiver should provide the map, it will likely be furnished without representation or warranty, and the purchaser will need to consider the map and ensure it correctly depicts the property in sale.
7) Where the property is situate within a multi-unit development or otherwise part of a scheme of development where service charges are payable, the receiver should produce replies to the standard pre-contract requisitions in this regard from the management company or from the agent appointed by the management company. These replies are required to provide the necessary information for purchasers in respect of service charges to ensure that the purchaser buys with all the relevant information in relation to the development and the management company.
8) While the committee recognises that the receiver may not be in a position to provide a planning warranty, all planning documents, including certificates of compliance in the receiver's possession and/or held by the owner of the charge, copy warning letters and enforcement notices (if applicable), should also be furnished with the contract.
9) It is the view of the committee that receiver's should provide a letter from the local authority/Irish Water detailing what services abutting on and serving the property, the subject matter of the contract, are in the charge of the local authority/Irish Water. A purchaser is entitled to this easily obtained information, and it should not be a cost to the purchaser.
10) Receivers should, on closing, furnish statutory declarations such as section 72 declarations and family law/civil partnership/cohabitants declarations made on the basis of his/her actual knowledge information and belief, having made the appropriate enquires.
11) In relation to the documentation to be furnished by the receiver, the view of the committee is that the following should be furnished:
   a) A 'certified copy' of the deed/instrument of appointment of the receiver.
   b) Where part only of secured assets are being sold, a 'certified copy' of the mortgage/charge can be accepted with the usual undertaking to produce the original in the Land Registry to facilitate registration. Where the entire of the secured asset is being sold, the original of the mortgage/charge should be provided to the purchaser on closing.
   c) As evidence of the right to appoint a receiver having arisen, if not clear from the mortgage, an appropriately redacted demand letter and/or a statutory declaration should be made by a suitably qualified person on behalf of the lender confirming that a demand was made and not met. A paper release/discharge of the mortgage/charge dated after date of assurance of the property.

CONVEYANCING COMMITTEE

VIRTUAL DATA ROOMS IN CONVEYANCING TRANSACTIONS

Virtual data rooms are becoming more common in conveyancing transactions, particularly for new developments and auctions. They can be a useful medium for making title available for both registered and unregistered title.

However, a purchaser's solicitor cannot be compelled to use a data room, and it should be clearly stated from the outset that, at any stage, a purchaser's solicitor is entitled to receive hard copies of the title.

If the respective solicitors do agree to use a data room, a number of factors must be considered:

- The data room should be well organised, with a clear and accurate index of the documents corresponding to clearly numbered and labelled files.
- The integrity of the documents must be maintained, with all documents being easily accessible and clearly legible.
- Documents should be date-stamped and, when new documents are added, they should be easily identifiable as new documents and the index updated. Where access to the data room is restricted to authorised parties, all parties with access should be notified of all new documents uploaded or any changes to the information in the data room.
- Documents should be in a format capable of being downloaded, saved and printed.
- Maps should be coloured.
- Hard copies must be furnished on closing, with a solicitor's certificate confirming that the hard copies of the title documents exactly mirror the documentation filed in the data room.

Solicitors should also consider privacy and security aspects. A virtual data room can allow a vendor's solicitor to track the activity of a purchaser's solicitor and hence, potentially, be aware of when, how often and for what length of time title investigation is being done. This may have an impact if a dispute occurs between the vendor and purchaser and there is subsequent litigation that raises questions about the extent of due diligence carried out by the purchaser's solicitor.

A generic 'for your information' section that is available to all the potential purchaser's solicitors may be a helpful feature. How-

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ever, a question-and-answer facility, whereby queries raised by an interested party are uploaded to the data room with the vendor's response, is not recommended, as purchasers' solicitors may not wish to be put on notice of other solicitors' questions and the respective answers.

It is recognised that, in exceptional circumstances – such as a loan portfolio sale involving a large number of properties and volume of documents – it may be impractical to provide hard copies at the outset. In those circumstances, the vendor's solicitor and purchaser's solicitor may, for their mutual benefit, opt solely to use a virtual data room.

THE USE OF DRAMATIC OR EMOTIVE WORDS AND REFERENCES TO A CALAMITOUS EVENT OR SITUATION IN SOLICITORS' ADVERTISING

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a solicitor includes a reference to a firm of solicitors in this context. All practising solicitors are reminded that, under the *Solicitors (Advertising) Regulations 2002* (SI 518 of 2002), an 'advertisement' means any communication that is intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice.

At a recent meeting of the Advertising Regulations Division of the Regulation of Practice Committee, the application of sections 9(a)(iii) and 9(a)(iv) of the regulations was considered in the context of the CervicalCheck controversy and the manner in which solicitors are advertising their professional services in connection with this matter. Regulation 9(a)(iii) prohibits an advertisement from including dramatic or emotive words or pictures. Regulation 9(a)(iv) prohibits an advertisement from making reference to a calamitous event or situation.

When exercising its regulatory function, the committee has a responsibility to ensure that vulnerable persons are not targeted by strategic marketing campaigns and that the integrity of the profession is preserved. As such, the committee was satisfied that regulations 9(a)(iii) and 9(a)(iv) should be enforced, as appropriate, in respect of all advertising relating to the CervicalCheck controversy.

Therefore, any advertising content published by a solicitor (whether it is a blog post, news item or update) that refers to the CervicalCheck controversy must be withdrawn from publication. A solicitor may advertise that they provide medical negligence legal services generally, but any reference to the CervicalCheck controversy will be investigated as a possible breach of regulations 9(a)(iii) and 9(a)(iv).

If a solicitor is unsure whether an advertisement is compliant with the regulations, it can be submitted for review to the Society's vetting service in advance of publication.

Eamonn Maguire is the Law Society's advertising regulations executive and is contactable on tel: 01 672 4800 or email: e.maguire@lawsociety.ie.

John Elliot,
Registrar of Solicitors and Director of Regulation

SOLICITORS (COMPENSATION FUND) REGULATIONS 2018 (SI 548 OF 2018)

The Regulation of Practice Committee reviewed the *Solicitors (Compensation Fund) Regulations 2013*, which incorporate the compensation fund application form. The committee, following its review, made a number of recommendations, and these have been incorporated into the *Solicitors (Compensation Fund) Regulations 2018* (SI 548 of 2018).

The regulations came into effect on 1 February 2019. There have been two significant changes from the 2013 regulations.

Any person proposing to apply to the Law Society for a grant from the compensation fund in respect of a loss shall make the application by submission of a completed application form to the Law Society within 12 months after the date when the loss first came to his or her knowledge, or within such extended time period as agreed by the Regulation of Practice Committee, in accordance with regulation 4 of the regulations. This extends the time limit from the previously allowed six months.

The Regulation of Practice Committee, before deciding whether or not to make a grant out of the compensation fund, may request the applicant to bring the facts in connection with his or her claim to the attention of An Garda Síochána, with the express purpose of providing An Garda Síochána with a comprehensive witness statement to assist in the investigation of allegations of dishonesty against the solicitor in question. This provision has been introduced to prevent or reduce the incidence of possible fraudulent claims on the compensation fund and to bring the claims system into line with generally applied insurance claims procedures, which require reporting of comparable matters to relevant police authorities.

The compensation fund application form is a schedule to the regulations, and the form has been revised to ensure more relevant information is obtained from claimants and to make the application form more consumer-friendly, thereby resulting in a speedier claims processing system.

In addition, a new booklet, *Guide to Claiming Refunds of Money Paid to a Solicitor*, has been published to assist solicitors and claimants in understanding the claims application processing system. The new application form must be used for all applications to the compensation fund from 1 February 2019.

The regulations, application form, and guide are available in the compensation fund section of the Law Society website.

John Elliot,
Registrar of Solicitors and Director of Regulation

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 Austin Heffernan, a solicitor practising as Austin Heffernan Solicitors, 20/21 Quinsboro Road, Bray, Co Wicklow, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT113]
Law Society of Ireland (applicant)
Austin Heffernan (respondent solicitor)
On 24 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure there was furnished to the Society an accountant's report for the year ended 18 February 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:
1) Stand advised and admonished,
2) Pay a sum of €612 as a contribution towards the whole of the costs of the applicant.

In the matter of Philip Comyn, a solicitor practising as a partner in O'Connor Dudley & Comyn, Solicitors, Westend, Mallow, Co Cork, and in the matter of the *Solicitors Acts 1954-2015* [4883/DT151/15]
Law Society of Ireland (applicant)
Philip Comyn (respondent solicitor)
On 9 October 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he failed to comply with an undertaking furnished on 13 July 2007 to Allied Irish Banks in respect of his named clients and borrowers and the property described in Co Cork in a timely manner or at all.

The tribunal ordered that the respondent solicitor:
1) Stand admonished and advised,
2) Pay the sum of €1,662 as a contribution towards the whole of the costs of the Law Society of Ireland.

In the matter of Grainne Tuohy, a solicitor practising as Grainne Tuohy, Solicitors, Suite 5072, Unit 1, 77 Sir John Rogerson's Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT109]
Law Society of Ireland (applicant)
Grainne Tuohy (respondent solicitor)
On 9 October 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 January 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:
1) Do stand admonished and advised,
2) Pay the sum of €762 as a contribution towards the whole of the costs of the applicant.

In the matter of Thomas C D'Alton, solicitor, formerly of James J Kearns & Son, Solicitors, Clonfert Avenue, Portumna, Co Galway, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [4077/DT05/16 and High Court record 2018/63 SA]
Law Society of Ireland (applicant)
Thomas C D'Alton (respondent solicitor)
On 12 June 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that, up to the expiry of the stay of referral of this matter to the tribunal, he had failed to comply with a direction of the committee made at its meeting on 22 July 2014 to refund three payments made from the client account relating to a named estate.

The tribunal ordered that the respondent solicitor:
1) Stand censured,
2) Pay a sum of €14,145 as restitution to a named estate,
3) Pay a sum of €1,500 as a contribution towards the whole of the costs of the Society.

The respondent solicitor sought to vary the order of the tribunal in proceedings entitled 2018 no 63 SA.

On 5 November 2018, the High Court declined to vary the order of the tribunal.

In the matter of Thomas C D'Alton, solicitor, formerly practising as principal of James J Kearns & Son, Solicitors, Clonfert Avenue, Portumna, Co Galway, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [4077/DT04/16; 4077/DT06/16; 4077/DT39/16; and High Court record 2017/76SA]
Law Society of Ireland (applicant)
Thomas C D'Alton (respondent solicitor)
On 12 June 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that:

4077/DT04/16
Up to the referral of this matter to the tribunal, the respondent solicitor had:
1) Failed to comply with part or all of an undertaking dated 21 May 2004 and extended on 7 September 2006 in relation to a specified property in a timely manner or at all,
2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, particularly letters dated 17 February 2012, 14 March 2013, 11 April 2013, 15 May 2013, 12 July 2013 and 29 August 2013,
3) Failed to respond adequately or some or all of the correspondence sent to him by the Society, particularly letters dated 3 January 2014 and 20 January 2014.

4077/DT06/16
Up to the referral of this matter to the tribunal, the respondent solicitor had:
1) Failed to comply with part or all of an undertaking dated 15 October 1992 relating to a named property in a timely manner or at all,
2) Failed to respond adequately or at all to some or all of the correspondence sent to

him by the complainant, in respect of the said undertaking, particularly the letter dated 9 June 2011,
3) Failed to comply with part or all of an undertaking dated 22 April 2002 relating to a named property in a timely manner or at all,
4) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly the letter dated 20 September 2011,
5) Failed to comply with part or all of an undertaking dated 26 April 2002 relating to a named property in a timely manner or at all,
6) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly the letter dated 28 January 2011,
7) Failed to comply with an undertaking dated 30 June 2003 relating to named properties in a timely manner or at all,
8) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly the letter dated 26 September 2011,
9) Failed to comply with an undertaking dated 26 August 2003 relating to a named property in a timely manner or at all,
10) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly the letter dated 29 August 2011,
11) Failed to comply with an undertaking dated 9 February 2004 relating to a named property in a timely manner or at all,
12) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly letters dated 9 December 2011 and 23 February 2012,
13) Failed to comply with an undertaking dated 10 February 2004 relating to a named property in a timely manner or at all,
14) Failed to comply with an undertaking dated 4 August 2005 relating to a named property in a timely manner or at all,
15) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly the letter dated 12 September 2012,
16) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, particularly the letter dated 25 February 2011,
17) Failed to comply with an undertaking dated 17 October 2005 relating to a named property in a timely manner or at all,
18) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly letters dated 13 March 2012,
19) Failed to comply with an undertaking dated 26 March 2007 relating to a named property in a timely manner or at all,
20) Failed to comply with an undertaking dated 13 September 2007 relating to named property in a timely manner or at all,
21) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, in respect of the said undertaking, particularly letters dated 9 December 2011 and 23 February 2012,
22) Failed to comply with an undertaking dated 15 November 2007 relating to named property in a timely manner or at all,
23) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant, particularly letters dated 9 December 2011 and 23 February 2012,
24) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant dated 9 March 2012 and 25 April 2012,
25) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society, particularly letters dated 19 July 2012, 5 September 2012 and 1 July 2013,
26) Failed to comply with the directions of the committee dated 28 January 2014 and 11 March 2014 in a timely manner or at all,
27) Failed to pay €500 ordered by the committee on 11 March 2014 towards the costs of the Society incurred as a result of the delay by the respondent solicitor in complying with its directions.

4077/DT39/16

Up to and including the date of this referral, that the respondent solicitor:
1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of his client over a named property, by undertaking dated 30 August 2000,
2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 4 July 2006, 4 July 2007, 2 January 2008, 27 February 2008, 20 February 2013, 11 April 2013, 12 August 2014, 23 December 2014 and 25 May 2015 respectively.

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

On 5 November 2018, the High Court, in proceedings entitled 2018 no76 SA, ordered that:
1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership, and that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another, to be approved in advance by the Law Society of Ireland,
2) The respondent solicitor pay the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Rosemary Higgins, solicitor, formerly of James J Kearns & Son, Solicitors, Clonfert Avenue, Portumna, Co Galway, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [5204/DT05/16 and High Court record 2017/63 SA]

Law Society of Ireland (applicant)

Rosemary Higgins (respondent solicitor)

On 12 June 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that, up to the expiry of the stay of referral of

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DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
8 & 9 Feb	**Property Transactions Masterclass** Commercial Property Transactions	8 General plus 2 M & PD Skills (by Group Study)	€570 *(iPad included in fee)*	€595 *(iPad included in fee)*
Starts 1 March	**Coaching Skills for Managers** Workshop 1 - 1 & 2 March Workshop 2 - 22 March Workshop 3 - 24 May	Full General plus Full M & PD Skills requirement for 2019 (by Group Study) - subject to attendance	€1,200	€1,440
Starts 1 March	**Garda Station Solicitor Training – SUPRALAT Project** 1 & 2 March and 6 April 2019 Application deadline 1 February 2019	Full General CPD requirement for 2019	€350	€425
7 March	**Law Society Finuas Skillnet Fintech Symposium –** Law & Regulation In Ireland	4 General plus 1 Regulatory Matters (including AML & Accounting compliance (by Group Study)	€150	€176
Starts 7 March	**Practical Legal Research for Practitioners**	2 General, 4 M & PD Skills (by Group Study)	€572 *(iPad included in fee)*	€636 *(iPad included in fee)*
Starts 20 March	**Certificate in Professional Education** (20 March, 23 March, 10 April, 13 April, 8 May, 11 May, 22 May)	Full M & PD Skills plus Full General requirement (by Group Study) for 2019	€1,450 *(iPad included in fee)*	€1,550 *(iPad included in fee)*
21 March	**International Issues in Sports Law –** in partnership with the EU & International Affairs Committee	2 General (by Group Study)	Complimentary	
21 & 22 March	**Certificate in English and Welsh Property Law** Online Assessment – 4 April	9 General (by Group Study)	€411	€588
28 March	**Mediation in the Civil Justice System –** in partnership with the ADR committee and CEDR	2.5 General (by Group Study)	€150	€176
5 April	**Employment Law Masterclass: Termination of Employment**	6.5 General (by Group Study)	€210	€255
12/13 April	**Planning & Environmental Law Masterclass for Conveyancers** Radisson Blu Royal Hotel, Dublin 8	8 General plus 2 M & PD Skills (by Group study)	€350	€425
16 May	**In-house Panel Discussion -** in partnership with the In-house & Public Sector Committee	3 M & PD Skills	€65	

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this matter to the tribunal, she had failed to comply with a direction of the committee made at its meeting on 22 July 2014 to refund three payments made from the client account relating to a named estate.

The tribunal ordered that:

1) The respondent solicitor stand censured,
2) The respondent solicitor pay a sum of €1,500 as a contribution towards the whole of the costs of the Society.

The respondent solicitor sought to vary the order of the tribunal in proceedings entitled 2018 no 63 SA.

On 5 November 2018, the High Court declined to vary the order of the tribunal.

In the matter of Paul Cunningham, solicitor, formerly practising as Cunningham Solicitors, 8 Emily Square, Athy, Co Kildare, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT01; 2017/DT02; 2017/DT47; and High Court record 2018/109 SA]

Law Society of Ireland (applicant)

Paul Cunningham (respondent solicitor)

On 19 July 2017, in an application bearing record no 2017/DT01, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Borrowed money from a named client and did not advise the named client to get independent advice before borrowing the money, contrary to chapter 3.5 of *A Guide to Good Professional Conduct for Solicitors*,
2) Borrowed money from a named client in breach of the fiduciary relationship of solicitor and client and, in so doing, brought the solicitors' profession into disrepute,
3) Failed to repay in full the loan of €27,000 to a named client, despite agreeing to do so, leaving an outstanding liability to the named client of €17,000 plus interest and costs,
4) Failed to make a payment of €5,000 before Christmas 2015, despite telling the CCRC he would do so.

On 19 July 2017, in an application bearing record no 2017/DT02, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking dated 21 April 2006 given by him on behalf of his named clients over property at Athy, Co Kildare, to Bank of Ireland on 21 April 2006,
2) Failed to reply satisfactorily or at all to the complainant's correspondence and, in particular, letters dated 14 December 2009, 8 February 2011, 24 April 2012, 31 August 2012, 3 April 2013 and 28 May 2013,
3) Failed to reply adequately, in a timely fashion, or at all to the Society's correspondence and, in particular, letters dated 6 May 2014, 9 July 2014, 21 November 2014, 9 December 2014, 20 January 2015, 24 June 2015 and 10 August 2015.

On 14 November 2017, in an application bearing record no 2017/DT47, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to transmit moneys, received by him for the complainant's costs, to the Complainant,
2) Failed to reply adequately or at all to the complainant's correspondence, in particular, letters dated 5 December 2014, 28 April 2015, 7 October 2015, 25 May 2016, 11 July 2016, 4 October 2016, 26 October 2016 and 4 November 2016 respectively,
3) Failed to reply adequately or at all to the complainant's telephone calls and, in particular, telephone calls made on 3 November 2016, 21 November 2016 and 22 November 2016 respectively,
4) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 29 November 2016, 25 January 2017 and 17 February 2017 respectively.

The tribunal ordered that the matters should go forward to the High Court and, on 19 November 2018, the High Court ordered that:

1) The recommendation of the Solicitors Disciplinary Tribunal be set aside and, in lieu thereof, the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor make restitution to the named complainant in the sum of €5,559.50,
3) The respondent solicitor pay the applicant its measured costs of the within proceedings.

In the matter of Thomas O'Donoghue, a solicitor formerly practising as principal of O'Donoghue & Co, Solicitors, 2 Egan's Lane, Tuam, Co Galway, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [8824/DT40/15; 8824/DT41/15, and High Court record 2018 no 134 SA]

Law Society of Ireland (applicant)

Thomas O'Donoghue (respondent solicitor)

8824/DT40/15

On 21 May 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral to the tribunal, he:

1) Failed to comply with an undertaking dated 18 September 2007provided to the complainant in a timely manner or at all,
2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant.

8824/DT41/15

On 21 May 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply with an undertaking dated 7 May 2010 provided to the complainant in a timely manner or at all,
2) Failed to respond to correspondence sent to him by the Society.

The tribunal ordered that the Law Society bring its findings and reports in both matters before the High Court.

On 3 December 2018, the High Court ordered that:

1) The name of the respondent solicitor be struck off the Roll of Solicitors,
2) The respondent solicitor pay the applicant's costs before the Solicitors Disciplinary Tribunal and the High Court. g

WILLS

Copperwhite, Gabriel (Gabe) William (deceased), late of C/ Altos Molino Pintado, 12 30170 Mula (Murcia), Spain, and formerly of Alexandra Quay, Ringsend, Dublin 4. Would any person having knowledge of the whereabouts of any will made by the above-named deceased in this jurisdiction please contact Carter Anhold & Co, Solicitors, 1 Wine Street, Sligo; tel: 071 916 2211, email: info@carteranhold.ie

Cox, Anthony (deceased) (farmer), late of Ballyfeeney, Scramogue, Co Roscommon, who died on 13 April 2018. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Brendan T Muldowney & Co, Solicitors, 7 Church Street, Longford; DX 29 008 Longford; tel: 043 334 5426, email: muldowneyandco@eircom.net

Delaney, Catherine (orse Kathleen) (deceased), late of 4 Seafort Terrace, Sandymount, Dublin 4, who died on 2 January 2018. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding same, please contact Bolger White Egan and Flanagan, Solicitors, 8 Lismard Court, Portlaoise, Co Laois; tel: 057 862 1468, email: denise@bweflaw.com

Gallagher, Margaret (deceased), late of Comeragh, Monastery, Enniskerry, Co Wicklow, who died on 3 November 2010, and **Gallagher, Hugh (deceased),** late of Comeragh, Monastery, Enniskerry, Co Wicklow, who died on 29 August 2018. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Frank Walsh & Co, Solicitors, 'Rectory View', Church Hill, Enniskerry, Co Wicklow; tel: 01 286 6400, email: olive@frankwalshsolicitors.com

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
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No recruitment advertisements will be published that include references to ranges of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice that indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

Harrold, Joseph Michael (deceased), late of Sweeps Cross, Coolanoran, Newcastle West, Co Limerick, and resided at Cobh, Co Cork, and the Locke, Cork City, who died on 14 September 2018. Would any person having knowledge of any will made by the above-named deceased please contact FDC Tax Department Limited, FDC House, 75 O'Connell Street, Limerick; tel: 061 404 644, email: orlabarry@fdc.ie

Hopkins, Aidan (deceased), late of Edenderry, Co Offaly, Rathangan, Co Kildare, and Thailand, who died on 3 November 2010. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Karen M Clabby, solicitor, Earl Street, Longford, Co Longford; tel: 043 335 0558, fax: 043 335 0559, email: karenmclabby@eircom.net. If no notice is received by this office within a period of 30 days from the date of this publication, the estate of the deceased will be administered in accordance with the rules of intestacy.

Kearns, Christopher (deceased), late of 338 Kildare Road, Crumlin, Dublin 12. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Staines Law, Suite 126 The Capel Building, Mary's Abbey, Dublin 7; tel: 01 872 0888, email: info@staineslaw.ie

Kendall, Susan (deceased), late of Breole, Taughmaconnell, Ballinasloe, Co Roscommon, who died on 23 September 2017. Would any person having knowledge of the whereabouts of a will dated subsequent to 1 February 2010 and executed by the above-named deceased please contact Mahon Sweeney Solicitors, The Square, Roscommon, Co Roscommon; tel: 090 662 7350, email: mail@mahonsweeney.ie

Leslie, Jacqueline (deceased), late of 37 Palmbury, Togher, Cork, who died on16 June 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Killian O'Mullane, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: killian@murphyenglish.ie

Morkan, Marie (deceased), late of 9 Oran Grove, Oranhill, Oranmore, Co Galway, and formerly of 45 Kimmage Grove, Lower Kimmage Road, Dublin 6, who died on 2 August 2018. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact MG Ryan, Solicitors, 34/36 Abbeygate Street, Galway; tel: 091 564 011, email: info@mgryan.com

McNicholas, Margaret (Peggy) Mary (orse Peggy McNicholas) (deceased), late of Lismirrane Lr, Swinford, Co Mayo (o/w Lismirrane, Bohola, Co Mayo), who died on 10 October 2017. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

McQuillan, Patrick (deceased), late of Hollybrook Lodge, St Michael's Estate, Dublin 8, formerly of 238 Mourne Road, Drimnagh, Dublin 12, and 109 Cosy Lodge, Rathmines, Dublin 16 (retired maintenance man, UCD), who died on 4 April 2017. Would any person having

knowledge of the whereabouts of a will executed by the above-named deceased dated 15 September 1995 or any will executed by the above-named deceased please contact O'Shea Legal, 3 Chancery Place, Dublin 7; tel: 01 677 7495, email: e.oshea@osheabusiness.ie

Mulqueen, Martin (deceased), late of Woodpark, Castleconnell, Co Limerick, who died on 12 November 2018. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Spencer & Donovan Solicitors, Main Street, Ballina, Killaloe, Co Tipperary; tel: 061 374 222, email: info@spencerdonovan.ie

Mulvey, Bridget (deceased), late of 36 Bannow Road, Cabra, Dublin 7, who died on 28 April 2005. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967, email: info@johnstonsolicitors.ie

O'Toole, Margaret (deceased), late of St Clare's Nursing Home, Griffith Avenue, Dublin 9, and formerly of 25 Seaview Avenue, East Wall, Dublin 3, who died on 19 May 2018. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3; tel: 01 833 3097, fax: 01 833 2515, email: info@baldwinlegal.com; ref: MOD/12134

Walsh, James (also known as Seamus Walsh) (deceased), late of 16 Cherryfield Walk, Clonsilla, Dublin 15, and Rockcorry, Co Monaghan. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Stephen Cawley, AB O'Reilly Dolan & Co, Solicitors, 27 Bridge Street, Cootehill, Co Cavan; tel: 049 555 2110, email: oreillydolan@eircom.net

TITLE DEEDS

Byrne, John (deceased). Would anybody having knowledge of the whereabouts of title deeds in respect of the late John Byrne of 8 St Francis Terrace, Weir Road, Tuam, Co Galway, who died on 16 January 2014, please contact Michelle Scarry, solicitor, Noonan & Cuddy, Solicitors, 12 Society Street, Ballinasloe, Co Galway; tel: 090 964 2344, fax: 090 964 2039, email: info@noonancuddy.com

Colonel Patrick McNally and Maeve McNally (deceased), late of Seabreezes, 44 Quay Street, Skerries, Co Dublin. Would anyone knowing the whereabouts or having any information regarding the title deeds to the above property please contact Shane Dowling, solicitor, Direct Law Solicitors, Unit 10 First Floor, Skerries Point Shopping Centre, Skerries, Co Dublin; tel: 01 849 4226, email: sdowling@directlaw.ie

In the matter of section 50 of the *Land and Conveyancing Law Reform Act 2009* and in the matter of an application by Anthony McDonnell, Michael Murray and James Donovan (the applicants)

Any person being the freehold owner or deriving title from or under the freehold owner, of all that and those the lands bounded by Stillorgan Road (N11) to the west, Clonkeen Road to the east and Kill Lane to the north, or the lands fronting onto the eastern side of Clonkeen Road, both in the areas of Deansgrange, Foxrock and/or Blackrock, Dublin 18, or any part thereof, such lands constituting: the lands retained by General Estates and Trust Company Limited at the time that such company conveyed adjoining land to Michael Joseph Noonan by deed of conveyance dated 2 June 1944 (the 1944 deed); and the lands retained by the said Michael Joseph Noonan at the time that such person conveyed a portion of the said adjoining land to Joseph Pius Noonan, William Mark McCarthy, John Gregory Hogan and James Matthew Quinlan by deed of conveyance dated 3 April 1945 (the 1945 deed); and claiming to be the dominant owner in respect of, or to otherwise have an interest in the performance of, the following freehold covenants ('the freehold covenants') entered into by the purchasers under the 1944 deed and the 1945 deed and now affecting the Christian Brothers' lands comprising c32,982 sqm in the Grange of Clonkeen, adjoining Clonkeen College, in Deansgrange, Dublin 18, which lands were part of the lands conveyed under the 1944 deed and the 1945 deed and are now owned by the applicants ('the servient land'):

1944 deed

"Firstly, that he will not erect or permit to be erected on any part of the lands hereby conveyed to the west of the Back Avenue shown on the maps annexed hereto any dwellinghouse or premises that shall not be of a cubic capacity and appearance at least equal to the last three dwellinghouses already built to the north of the undeveloped eastern road frontage adjoining the public roadway known as the Upper Road aforesaid. Secondly, that he will not erect or permit to be erected on the lands hereby conveyed east of the said Back Avenue any dwellinghouse or premises which shall not be of a cubic capacity and appearance at least equal to the semi-detached dwellinghouse already built on the west side of the Clonkeen Road. Thirdly, that should he develop the interior of the lands hereby conveyed, he will do so in accordance with the plan already lodged by the vendor with the Dublin County Council or in accordance with some substituted plan approved by the said county council and that he will indemnify the vendor against all claims by the said county council in respect of the development of the property hereby conveyed."

1945 deed

"Firstly, that they will not erect or permit to be erected on the lands hereby conveyed any house or houses, which shall not be of a cubic capacity and appearance at least equal to the semi-detached houses now already built on the west side of the Clonkeen Road, opposite to the lands hereby conveyed. Secondly, that should they develop the lands hereby conveyed, they will do so in accordance with the plan already lodged by the general estates and trust company limited with

the Dublin County Council or in accordance with some substituted plan to be approved of by the county council and that they will indemnify the vendor against all claims by the county council or any other proper body, person or corporation in respect of the development of the property hereby conveyed arising out of each development."

Take notice that the applicants have applied to the High Court (record no 2018/499SP) as freehold owners of the servient land and servient owners in respect of the freehold covenants for an order discharging in whole the freehold covenants on the grounds that continued compliance with the freehold covenants would constitute unreasonable interference with the use and enjoyment of the servient land, and take further notice that, at a sitting of the High Court on 3 December 2018, O'Regan J indicated that it is the court's intention to grant the order sought by the applicants at a further sitting of the High Court (chancery motions (2) list) at 10.30am on 4 March 2019, unless any person claiming to be the dominant owner in respect of, or to otherwise have an interest in the performance of, the freehold covenants appears in court on that date and shows just cause as to why the court should do otherwise.

Date: 1 February 2019

Signed: William Fry (solicitors for the applicants), 2 Grand Canal Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of 336A North Circular Road, Dublin 7, and an application by Eileen Heron, Linda Heron and Catherine Hallassey

Any person having a freehold estate or any intermediate interest in all that and those 336A North Circular Road, Dublin 7, being currently held by Eileen Heron, Linda Heron and Catherine Hallassey (the applicants) under an indenture of lease dated 20 April 1920 (the lease), between Josephine Hickey and Francis Flynn of the one part and JJ Bailey of the other part, and being also the subject of a superior lease dated 25 August 1877 between parties unknown, take notice that the applicants, as lessees under the lease, intend to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin 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 premises are unknown or unascertained.

Date: 1 February 2019

Signed: Reddy Charlton (solicitors for the applicants), 12 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Tigerway Richmond Limited in respect of the premises known as 119-120 Church Street Upper, Dublin 7

Take notice that any person having any interest in the freehold estate of the following property: 119-120 Church Street Upper, Dublin 7. Take notice that Tigerway Richmond Limited (the applicant) intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid premises, 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, Tigerway Richmond Limited 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 1 February 2019

Signed: Gallagher Shatter (solicitors for the applicant), 4 Upper Ely Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Tigerway Richmond Limited in respect of the premises known as 121 Church Street Upper, Dublin 7

Take notice that any person having any interest in the freehold estate of the following property: 121 Church Street Upper, Dublin 7. Take notice that Tigerway Richmond Limited (the applicant) intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid premises, 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, Tigerway Richmond Limited 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 1 February 2019

Signed: Gallagher Shatter (solicitors for the applicant), 4 Upper Ely Place, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Greybirch Limited in respect of the property known as no 6 George's Quay, Dublin 2

Take notice that any person having any interest in the freehold estate or any intermediate interests in the following property at no

6 George's Quay, Dublin 2: all that and those the dwellinghouse, workshop, store and premises known as number 6 George's Quay, containing in front to said street, 23 feet and 6 inches, and extending backwards to the rear, 61 feet and 4 inches, as is more particularly set out on the map endorsed on a lease dated 12 October 1906 between (1) George Cumberland Ross, Charles Emilius Ross, Emily Whitmore Ross, Sara Jane Ross, Grace Hurst and Elizabeth Jemima Chatlauneuf Orr and (2) Thomas J Smyth, coloured red and green, situate in the parish of St Mark and city of Dublin, and held under a lease dated 12 October 1906 between (1) George Cumberland Ross, Charles Emilius Ross, Emily Whitmore Ross, Sara Jane Ross, Grace Hurst and Elizabeth Jemima Chatlauneuf Orr and (2) Thomas J Smyth for the term of 120 years from 25 March 1901, subject to the yearly rent of £8, and also held under a fee farm grant dated 1 February 1861 between (1) Richard John Wolsey and (2) Thomas Beeby, Peter George Dumoulin, Susannah Dumoulin, Susan Beeby, Elizabeth Beeby, Jane Mongan, William Maffett and William Hamilton Maffett.

Take notice that Greybirch Limited, being the entity now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple estate or 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 the title to the aforementioned property to the below named within 21 days from the date of this notice.

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

Date: 1 February 2019

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

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property known as Queen of Peace Centre, 4a, 6 and 8 Garville Avenue, Rathgar, Dublin 6, and in the matter of an application by Orwell House Limited

Any person having a freehold interest or any intermediate interest in all that and those the premises Queen of Peace Centre, 4a, 6 and 8 Garville Avenue, Rathgar, Dublin 6 (hereinafter called the property), being part of the premises demised by lease dated 19 March 1879 (the lease' made between (1) William McMaster and Hamilton Carr, (2) George McMaster and John Boyle McMaster and (3) John Charles Meyers (the lessee); the first premises, *inter alia*, was demised unto the 1879 lessee for the term of 400 years from 29 September 1878 (the term) subject to the yearly rent of £40 and subject to the covenants on the no 6 lessee's part and conditions contained therein, insofar as they continue to affect the first premises, by the lease; the second premises, *inter alia*, was demised to the lessee for the term, subject to the yearly rent of £40 and subject to the covenants on the lessee's part and conditions contained in the lease, insofar as they continue to affect the second premises, and by the lease; the third premises, *inter alia*, was demised to the lessee for the term subject to the yearly rent of £40 and subject to the covenants on the lessee's part and conditions contained in the lease, insofar as they continue to affect the third premises, was therein described as (part 1 – the first premises) "all that and those that plot of ground facing Garville Avenue, Rathgar, in the parish of Rathfarnham, barony of Rathdown and county of Dublin, containing in breadth in front on the north side to Garville Avenue, 27 feet in breadth, in the rear, 11 feet 6 inches, and in depth from front to rear on the east side 265 feet in a straight line or thereabouts be the said admeasurements more of less delineated on the map hereto, together with the dwellinghouse and out offices thereon known as no 4 Garfield Terrace and recently known as no 39 Garville Avenue aforesaid"; (part 2 – the second premises) "all that and those that plot of ground facing Garville Avenue, Rathgar, in the parish of Rathfarnham, barony of Rathdown and county of Dublin, containing in breadth in the front on the south side to Garville Avenue aforesaid 24 feet in breadth, in the rear, 24 feet and 6 inches, and in depth from front to rear, 293 feet or thereabouts, be the said several admeasurements more or less together with the dwellinghouse and offices thereon and which said premises are now called and known as no 3 Garfield Terrace, Garville Avenue, and are more particularly delineated and described by a map attached to these presents"; and (part 3 – the third premises) "all that and those the yard and premises with the buildings therein situate on the north side of Garville Avenue at the rear of the houses and premises known as numbers 1, 2, 3 and 4 Garfield Terrace, being portion of the plot of land comprised in the said indenture of lease of 19 March 1879, which said premises are situate in the parish of Rathfarnham, barony of Rathdown and county Dublin", which said premises became known as Queen of Peace Centre, 4A, 6 and 8 Garville Avenue, Rathgar, Dublin 6, and are held under the lease by the applicant who is seeking the freehold interest in the above described property.

Take notice that any person having any interest in the freehold estate of the property that the applicant intends to submit an application to the county registrar for county Dublin for acquisition of the freehold interest (and any intermediate if any) in the said premises Queen of Peace Centre, 4A, 6 and 8 Garville Avenue, Rathgar, Dublin 6, and any party asserting that they hold a superior interest in the aforesaid property 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 city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 1 February 2019

Signed: Noel Smyth & Partners (solicitors for the applicant), 12 Ely Place, Dublin 2

DE MINIMIS NON CURAT LEX

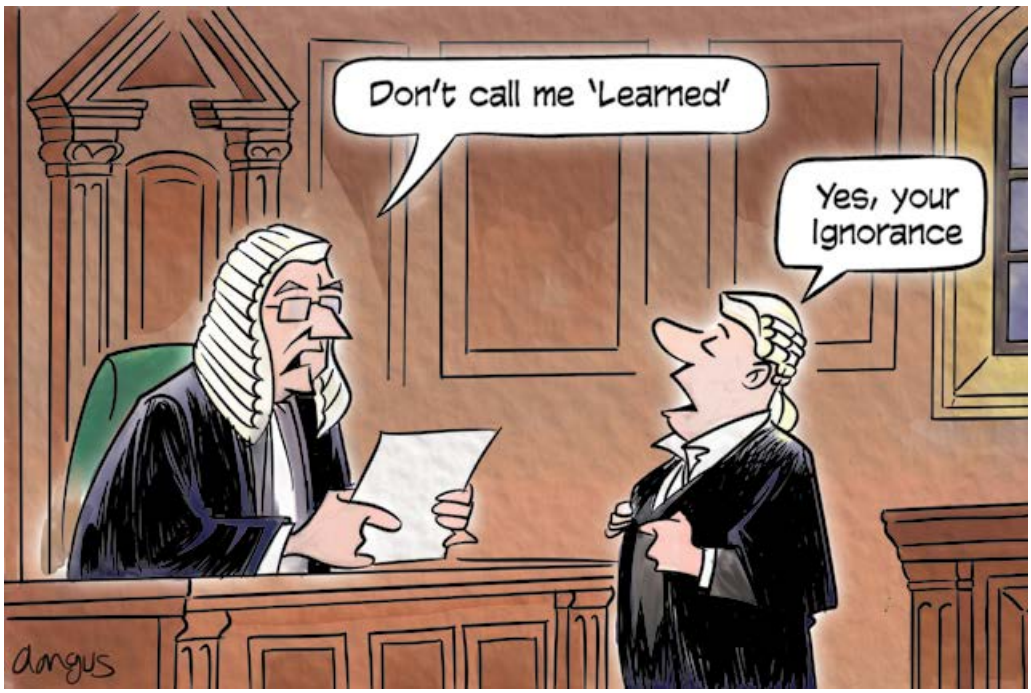
TITLES – WHO NEEDS 'EM?

In order to make written submissions more concise, a Court of Appeal judge in Britain has urged lawyers to do away with honorifics, *Legal Cheek* reports.

Lady Justice Rafferty, chair of the Judicial College, suggested that lawyers should dispense with phrases like 'learned judge' in order to cut submission word counts and save time.

"Speaking entirely for myself," she said, "life will still hold meaning for me if I am referred to as the 'judge', not the 'learned judge'."

Rafferty commented that many written submissions were "too long, rambling, waffling, warbling". Other phrases on the judge's hit-list included "it is thought", "it is arguable" and "it is suggested".



CANNIBAL HANDS HIMSELF IN

A man who told police officers that he was tired of eating human flesh has been sentenced to life in prison for killing a woman in South Africa, the *Independent* reports.

Nino Mbatha (a traditional healer) and a second man, Lungisani Magubane, were charged with the murder of Zanele Hlatshwayo and were found guilty by the Pietermaritzburg High Court. Last year, Mbatha walked into a police station in KwaZulu-Natal province. He asked for police assistance, saying he was "tired" of eating body parts, according to *The Witness* newspaper.

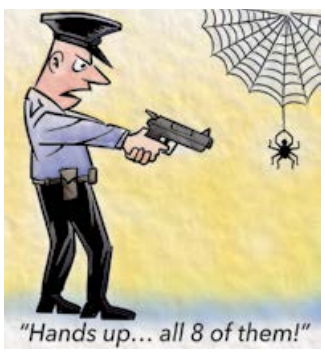
Two police officers failed to believe his story until Mbatha produced a human hand and leg from his bag. A team of investigators later travelled to the 33-year-old's house, where they discovered more body parts.

Mbatha was acquitted on a charge of being in possession of Hlatshwayo's body parts, which the judge said duplicated the murder charge, and was also acquitted of dealing in body parts by offering them for sale, due to insufficient evidence.

INTO THE SPIDER-VERSE

Police in Western Australia confirmed that they responded to an emergency call after a concerned passerby walking outside a house in suburban Perth heard a toddler screaming and a man repeatedly shouting, "Why don't you die?"

The Guardian reports that, when the officers arrived, they found a man "trying to kill a spider". The man apologised for his extreme fear of arachnids.



The Wanneroo Police Twitter account posted: "Police spoke with all parties, who advised that husband had only been trying to kill a spider (has serious fear of spiders). Apologised for inconvenience to police. No injuries sighted (except to spider). No further police involvement required."

SCREEN-TEST CHALLENGE

Seth Stoughton, an associate professor at the University of South Carolina, tweeted recently that, while drafting a criminal law paper 90 minutes before an exam, he received an email from one of his students, asking whether he would be willing to increase the font size on his computer so that the student could view the questions from "across the way".

***Legal Cheek* reports that the eagle-eyed law student had spotted the academic working on the exam paper from a nearby building. The student even went to the trouble of attaching a photo of the professor in front of his computer screen – though the content on the screen was illegible.**

Needless to say, the request was politely declined.

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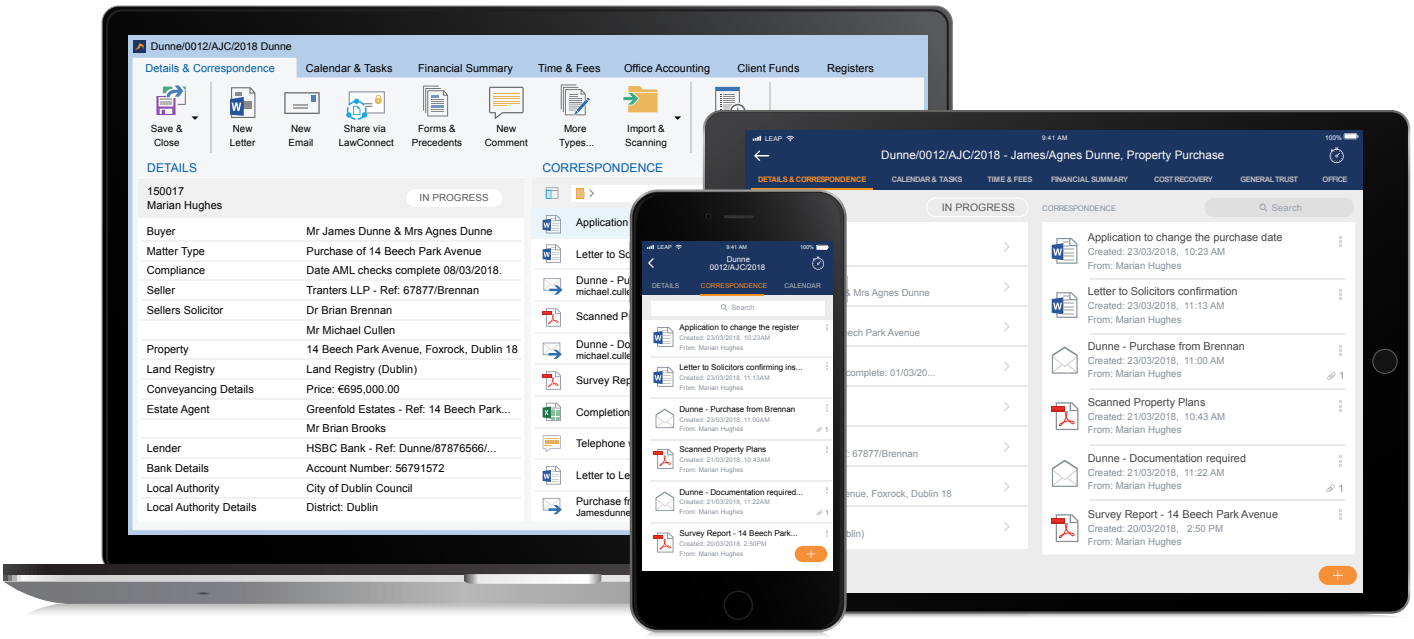

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