Law Society Gazette

Regulars

News	2
Viewpoint	6
Book review	35
Tech trends	36
Briefing	38
Committee reports	*38*
Practice notes	*38*
Legislation update	*39*
Solicitors Disciplinary Tribunal	*41*
Annual report of the Solicitors Disciplinary Tribunal	*43*
Legislation focus	*46*
FirstLaw update	*51*
Eurlegal	*55*
People and places	60
Professional information	63
Recruitment advertising	68

Cover story

8 Time waits for no man
It appears that great difficulties lie ahead for victims of medical negligence and their legal advisors, due to the reduction in the *Statute of limitations* to two years for personal injury claims, warns Michael Boylan

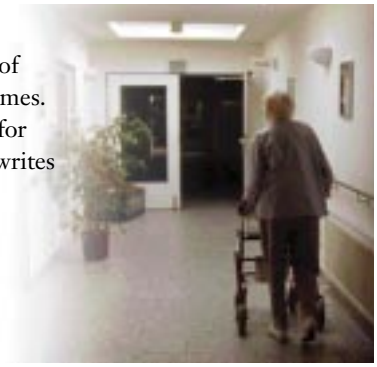
12 High-pressure deadlock
The 'Rossport Five' and the law of contempt of court are headline news. Pamela Cassidy looks at the history of contempt and argues that the courts have little discretion as to sanction

17 Age-old problem
The defence of 'mistake as to age' in relation to sexual offences committed on young girls has taken a u-turn. Edel Kennedy explains

20 Ahead of the posse
The Law Society retirement trust scheme's long-term performance continues to outshine its peers, says Carina Myles

24 Emergency exits
How should practitioners and their families react when a practice faces an unexpected crisis? John Costello, of the Law Society's Guidance and Ethics committee, has been considering the problem and offers indispensable advice to members

30 Hard times
The minister for health intends to compensate those at the wrong end of illegal charging in public nursing homes. The situation is less clear, however, for residents of private nursing homes, writes Byron Wade



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NATIONWIDE
News from around the country

CLARE

It's not rubbish

Solicitors in Co Clare have been asked by Clare County Council to carefully consider the contents of old files before destroying them.

"The County Council's archives officer is kindly offering to carefully examine our old files, consistent with our obligations to client confidentiality, and to archive historical materials for the nation," according to Gerry Flynn, partner in Michael Houlihan & Partners in Ennis.

Old letters and documents might appear insignificant, but could in fact be of huge interest. The famous and historically-significant letters of Roger Casement were among the old files in the offices of Ignatius Houlihan Solicitors. A client had donated them. They were later donated by Ignatius Houlihan Solicitors to Clare County Council and are now part of the state's documentary records.

Dr Eamonn Hall, solicitor, is chairman of the government's National Archives Advisory Council sub-committee. His sub-committee recently produced a draft document to assist solicitors with old documents that might be of great interest to archivists and historians.

"This draft document will be a proposed agreement between the individual solicitor and the local authority or the National Archives on depositing documents with them," Eamonn said. The document will shortly be available to solicitors. Further details in next month's *Gazette*.

It is important to reassure solicitors that documents will remain the property of the solicitor. The depositing solicitor must be informed before any person is allowed to copy the documents, or even to take notes on them, he told the *Gazette*.

Dr Hall has called on colleagues to carefully check

Roger Casement: historically-significant letters

before discarding old files and documents.

WEXFORD

Those courthouses again

The closure of the courthouse in New Ross last month and the transfer of the court sittings to Enniscorthy has caused considerable disappointment among members of the profession and the general public.

"The move has caused inconvenience, both for practitioners and the general public," noted Helen Doyle, president of the Wexford Solicitors' Association. The New Ross court building, however, is a 19th century structure that was in clear need of major refurbishment.

Gerry Nugent of the Courts Service has reassured solicitors and the public that it is actively seeking alternative accommodation in New Ross.

The court sittings in New Ross had to be suspended for reasons of health and safety.

CARLOW

And again

Across the border in Co Carlow – in Bagenalstown – similar angst is abroad. There, the Courts Service is proposing to amalgamate court sittings with those of Carlow town. Mr. Nugent again: "This proposal is in the interest of providing a superior quality service to people."

However, local politicians are unhappy. Bagenalstown Fine Gael councillor, Breda Byrne, has called for an immediate meeting of the town council to discuss the matter. "It is vital that we do everything in our power to ensure that the District Court in Bagenalstown remains open and, instead, is refurbished, ensuring its continued existence in the town," she argued.

DUBLIN

The judges

The Dublin Solicitors' Bar Association recently welcomed the announced appointments of Judge Matt Deery and Miriam Malone as presidents of the Circuit and District Courts respectively. The DSBA looks forward to working with them in the interests of the public and the profession.

Secretary of the DSBA, Kevin O'Higgins, says: "Both presidents are experienced and highly regarded jurists and we are confident of further progress being made in the dispensing and administration of justice in the most populated courts in the state."

Further education

A family law seminar to be chaired by Mr Justice McKechnie, and including speakers Gerard Durcan SC, Hillary Coveney, solicitor, and Mary Hayes, solicitor, takes place on 6 October.

A practice management seminar, 'Getting more out of your practice', was also held recently by the DSBA. A repeat seminar on the very popular topic of the *Residential Tenancies Act* and, in particular, termination notices was also held. Forthcoming seminars will cover equity release schemes and e-conveyancing.

AGM

The annual general meeting of the DSBA will take place on Tuesday 25 October at 6.15pm in the Davenport Hotel in Dublin 2. DSBA secretary, Kevin O'Higgins, sends a cordial invitation to all members. Orla Coyne has been an effective and popular president and will be succeeded by Brian Gallagher, who is also expected to be an innovative president.

DONEGAL

Double date

The Inishowen Bar Association has decided on a time-effective way of promoting further professional education. On 20 October, following the sitting of the District Court in Buncrana, colleagues will proceed to a CPD course on practice management.

"We are expecting a very good attendance by colleagues because many solicitors will be in Buncrana for court. Apart from a learning experience, the course will also provide a good way to meet colleagues outside of the courtroom," noted Geraldine Conaghan, president of the association.

State solicitor

The recent retirement from office of Buncrana solicitor, Ciaran Mac Lochlainn, as state solicitor for County Donegal was marked by a function in Letterkenny.

The function was attended by most legal luminaries in the north-western reaches of the state, including Judge Matt Deery, the recently-appointed president of the Circuit Court, and District Court Judge John O'Donnell. Ciaran remains in active private practice in Buncrana. G

Nationwide *is compiled by Pat Igoe, principal of the Dublin law firm Patrick Igoe & Co.*

New independent adjudicator

Lenore Mrkwicka has been appointed independent adjudicator of the Law Society. She succeeds Eamon Condon, who has retired having completed eight years in the role.

The office of independent adjudicator provides an autonomous forum to which members of the public can apply if dissatisfied with the manner in which the Law Society deals with any complaint made by, or on behalf of, a client against their solicitor.

The adjudicator's role is to ensure that the Law Society deals with complaints about the conduct of a solicitor fairly and impartially. She can recommend changes to the society's complaints procedures that are, in the adjudicator's view, necessary to maintain the highest standards. The appointed person cannot be a solicitor or barrister and is independent in the exercise of their function.

Lenore Mrkwicka was the first Irish Congress of Trade Unions' nominee to the Registrar's Committee of the Law Society. She served from 1993 to 2002, originally as a lay observer but, following the formal creation of such positions by the *Solicitors' (Amendment) Act, 1994*, continued as a lay member of the committee.

Lenore, who is a registered general nurse, was for many years active in the Irish Nurses' Organisation, where she rose to the position of deputy general secretary. She was also an executive council member of the Irish Congress of Trade Unions for ten years.

In 2001, she was appointed by the tánaiste and then minister for enterprise, trade and employment, Mary Harney, as a rights commissioner of the Labour Relations Commission, in which capacity she continues to serve. She holds a masters degree in industrial relations and also serves as a member of the Employment Appeals Tribunal. She has been appointed for a two-year term as independent adjudicator.

Lenore Mrkicka: independent mind

Commenting on her appointment, Law Society president Owen Binchy said: "Lenore Mrkwicka is well qualified, in terms of experience and independent mindedness, to be the new independent adjudicator. Every system gets things wrong from time to time and every system can be improved. Lenore Mrkwicka will help to ensure that the society's complaints handling is as efficient and fair to all concerned as is humanly possible."

In addition to her power to send complaints back for reconsideration by the society, Lenore will produce annual reports, which will be forwarded by the society to the minister for justice, equality and law reform and released to the media.

Human rights and immigration conference

The Human Rights Committee and Human Rights Commission are having their annual conference in October on the theme of *Migrant workers and human rights*.

The context is the government's *Discussion document on immigration and residence*, draft legislation promised for Christmas and the large number of new immigrants (including many from outside the EU) expected to continue arriving over the next five years.

Speakers will include Ambassador Prasad Kariyawasam, chair of the UN Committee on Migrant Workers and their Families, Piaris MacEinri of UCC's Migration Studies Centre, solicitors Noeline Blackwell and Aisling Ryan, Catherine Costello of the Immigrant Council of Ireland, Mike Jennings of SIPTU, Cathryn Costello of Worcester College, Oxford, solicitor Louise Christian from the UK and ex-congressman Bruce Morrison from the US. The minister for justice or a spokesman from his department will also speak on the proposed immigration and residence legislation.

The conference takes place on Saturday 15 October in Blackhall Place and involves five hours of CPD group study. The attendance charge of €25, concession €12, includes lunch and refreshments. Advance registration and payment will be necessary. Contact Nicola Crampton, e-mail: n.crampton @lawsociety.ie or tel: 01 672 4961, and see further details on *www.lawsociety.ie*.

THE NEGOTIATORS GO HEAD TO HEAD

Law students from 16 countries came together for the fifth International Negotiation Competition held in the Law Society, Blackhall Place, from 4-8 July. The competition was jointly hosted by the Law Society of Ireland and the King's Inns.

The Law Society team was placed fifth overall and consisted of: *student negotiators* – Jim O'Sullivan (Liam F Coghlan & Co, Killarney) and Ciaran Leavy (Lavelle Coleman, Dublin); *coaches* – Antoinette Moriarty and Eva Massa; and *advisors*: Colette Reid, Denise Casey and Padraic Courtney.

The social programme included a reception at which the chief justice Mr Justice John L Murray, was guest of honour and tea with the President of Ireland, Mary McAleese.

ARDCHÚRSA GAEILGE

Reachtálfar ard-chúrsa Gaeilge do lucht cleachtaithe dlí in Óstaí an Rí (King's Inns) arís an bhliain acadúil seo (2005-06). Reachtálfar léachtaí gach tráthnóna Luain idir 6.30 agus 8.30 ag tosú an 17ú Deireadh Fómhair, 2005.

Tabharfar seacht léacht ar an gcúrsa. Cuirfear béim ar obair phraiticiúil agus déanfar mion-phlé ar stádas dlíthiúil na Gaeilge agus ar obair aistriúcháin. €150 an táille. Tuilleadh eolais: Dáithí MacCárthaigh BL 01 817 5251; 087 2368364.

RETIREMENT TRUST SCHEME

Unit prices: 1 September 2005
Managed fund: €5.10903
All-equity fund: €1.16490
Cash fund: €2.61127
Long-bond fund: €1.38262.

COMPENSATION FUND

September 2005 – the following claim amounts were admitted and approved for payment by the Regulation of Practice Committee at its meeting in September 2005: Thomas Flood, Dargan House, Fenian Street, Dublin 2 – €163,900.

Geoffrey takes national award

The Law Society's deputy director of education, Geoffrey Shannon, has won the 'Outstanding Person of the Year Award' for Ireland.

Geoffrey's nomination is in the category of 'Contribution to children, world peace and/or human rights'. He was previously nominated for the Galway regional heats. He will now represent Ireland at the international round of the competition in Vienna in late October.

Sarah Benson of the Children's Rights Alliance commented: "Geoffrey is the dominant and most vociferous champion of children's rights in Ireland today."

The awards are organised by Junior Chamber International, which is a worldwide federation of young professionals and entrepreneurs.

ECHR study gets green light

The Human Rights Committee of the Law Society and the Dublin Solicitors' Bar Association (DSBA) have accepted a tender from NUI Galway for a study entitled *European Convention on Human Rights Act, 2003 – first years: application, evaluation and review*.

The jointly sponsored study will run from October to June 2006, and will analyse the existing cases in which the act has been argued and applied. It will examine the interpretive obligation in section 2, the remedy for breach of statutory duty under section 3, the declaration of incompatibility under section 5, and the remedy of judicial review. It will also examine relevant experience in the UK under the *Human Rights Act 1998*.

Donncha O'Connell

The intention is to produce a report and a database of cases with ECHR application. The database will be maintained in the future as a resource for members of the legal profession – both practising and academic.

The study will be undertaken by a team led by Donncha O'Connell, dean of the Faculty of Law in NUI Galway, who is the Irish member of the European Commission's EU Network of Independent Experts on Fundamental Rights. The other members of the team are Emer Meenaghan and Siobhan Cummiskey.

Solicitors who wish to draw any information to the attention of the team are invited to contact Donncha O'Connell at donncha.oconnell@nuigalway.ie.

TLS condemns criminal 'law'

The Tanganyika Law Society (TLS) says that the use of inmates to evict civilian residents of Ukonga, in Dar es Salaam, on 10 September compromised the role of prisons as behavioural correctional institutions.

The TLS noted that the decision to set convicted criminals on innocent and unarmed civilians undermined societal resolve to correct them. During the evictions, two journalists and scores of civilians were injured.

The forcible eviction triggered uproar countrywide from human rights organisations and journalists' professional bodies. These have called for the sacking of home affairs minister, Omar Ramadhan Mapuri.

Scots go multinational

Scottish commercial law firm, Semple Fraser, has become the second law firm in that country to take on multinational partnership status. It is looking to expand both north and south of the Scottish border.

Assuming multinational status enables Scottish law firms to promote to partner level lawyers who have qualified elsewhere.

As a result, Semple Fraser is expected to elevate commercial property expert, Roger Clarke, to the partnership. Clarke qualified to practise in Ireland, and England and Wales, but not Scotland. He was recruited to the firm from London-based Travers Smith.

Gazette names new editor

The new editor of the *Law Society Gazette* is Mark McDermott. Mark was formerly editor of internal communications at Dublin Airport Authority, serving Dublin, Shannon and Cork Airports for 16 years.

During that time, he headed up *Runway* magazine, played a key role in establishing and editing the group's intranet *Connect*, and was editor of *GS Magazine*, the publication of Great Southern Hotels – a DAA subsidiary.

Mark holds a Masters in Communications from DCU, has a BA (English, Philosophy and Classical Studies) from St Patrick's College, Maynooth, and a Diploma in Journalism from the College of Commerce, Rathmines.

The Kilkenny man was a joint member of the airport's editorial team that won a series of *Irish Independent*/Communicators in Business Awards during the 1990s, including 'Best Magazine' and 'Best Editorial Team', and other awards from the British Association of Communicators in Business.

Married to Mary, they have two children, Miriam and Kenneth.

"I'm delighted to be joining the *Law Society Gazette*," says Mark. "It's a highly-respected publication in Ireland's publishing world. I'm joining an excellent team in Garrett, Nuala, Catherine and Valerie. Together, we'll continue to push the standards of publishing excellence."

Death in the afternoon: *Nachova v Bulgaria*

Alma Clissmann reports on developments in relation to the practical application of the *European convention on human rights*

In July 1996, Kuncho Angelov and Kiril Petkov, two Bulgarian army conscripts, absconded. They were Romas, had previously been sentenced for repeated absences without leave, and both had theft convictions.

As a result of a tip-off, four military police officers were sent to arrest them at Kuncho's grandmother's house. They were told to carry handguns and automatic rifles and wear bulletproof vests, "in accordance with the rules", and to use all necessary means to arrest them.

The two were unarmed and not dangerous. They tried to escape, and after warning them that he would shoot if they did not surrender, Major G fatally wounded them. A neighbour wanted to get his young grandson out of the way of danger, but Major G pointed his gun at him and said "You damn Gypsies!"

The investigation into the deaths was opened the same day. The autopsy found that both died from automatic rifle fire, one shot in the chest and the other in the back. Major G was exonerated and found to have followed the military police regulations. He had warned the two several times and had fired shots into the air. He had shot them because they did not surrender, they might otherwise have escaped, and he had tried to avoid inflicting fatal injuries. No one else had been hurt, and the authorities decided not to prosecute the officers.

Sofia, Bulgaria

Right to life

On 6 July 2005, the European Court of Human Rights found that the legal framework was fundamentally deficient and fell well short of the level of protection required by the *European convention on human rights*.

The military police regulations on the use of firearms effectively permitted the use of lethal force for arrest for even a very minor offence. The regulations were not published and contained no clear safeguards to prevent arbitrary killing.

In relation to the arrest operation, the court also found that the authorities had failed to minimise the risk of loss of life. The arresting officers had been told to use all available means to arrest the absconders, even though they were unarmed and harmless. This displayed a deplorable disregard for the pre-eminence of the right to life.

The court considered that, in the circumstances, any resort to lethal force was in breach of article 2, regardless of the risk of escape. Major G used grossly excessive force and used automatic rifle fire, when he could have used his handgun. One of the victims had been shot in the chest, and it was possible he had turned around to surrender.

The investigation was found to have confirmed the fundamentally defective nature of the regulations and their disregard for the right to life. The authorities had not examined all relevant matters, and a number of obvious and essential steps had not been taken in the investigation, effectively shielding Major G from prosecution. In these three aspects of Bulgaria's obligations under article 2, it was found to be in breach.

Prohibition of discrimination

The applicants alleged that the killings were racially motivated because the victims were Roma. The court adopted a standard of proof of 'beyond reasonable doubt', and the majority of the court did not find that racial motivation had been proved.

In contrast to the approach of the chamber that had previously heard the case, the grand chamber did not believe that the burden of proof shifted to the Bulgarian Government because of the alleged failure to investigate the alleged racial motivation for the killing. The majority of the grand chamber therefore did not find that there had been a violation of article 14 taken together with article 2.

But it did find a violation of article 14 in the failure to investigate a racial motivation. The bystander's evidence of racial abuse, the many published accounts of prejudice and hostility towards Roma in Bulgaria, and the use of grossly excessive force all amounted to sufficient evidence to alert the authorities to the need to investigate the possible racist overtones of the killings. The authorities had not pursued this line of enquiry and had thereby shielded Major G from prosecution.

Racial grounds

The *Nachova* decision is in line with the existing jurisprudence on article 2. Its added interest lies in the discrimination aspect of the decision. The original decision in the case, in February 2004, was the first finding of a violation of article 14 in a case involving racial discrimination.

The grand chamber, rehearing the case at the request of the Bulgarian Government, pulled back from the earlier decision that the burden of proof should shift to the respondent when a *prima facie* case had been made that the authorities had not pursued lines of enquiry that were clearly warranted and where evidence of possible discrimination was disregarded. Nevertheless, the judgment gave weight to studies and reports on systemic discrimination against Roma in the administration of justice, in the police service and on the part of other authorities. It noted the absence of a requirement to take special account of racial motivation in offences. And in relation to the standard of proof, it gave nuance to the standard of 'beyond reasonable doubt' (s147). The approach of the court in this case will have implications for many aspects of the treatment of minorities and the protection of their human rights. G

Alma Clissmann is the Law Society's parliamentary and law reform executive.

Tough love: how to deal with

The solicitor of a chemically-dependent criminal offender does his client no service by getting him off lightly in the courts. Unwittingly, the solicitor is enabling a debilitating condition to go untreated, argues Mick Devine

The number of requests for progress and welfare reports by solicitors whose clients have had a sentence suspended – pending the outcome of a course of treatment for chemical dependency at Tabor Lodge – has risen in the past year. This is in addition to referrals to the treatment centre from the Probation and Welfare Service.

The offices of the criminal justice services and treatment services can work together for the increased benefit of all concerned. But, first of all, we need to understand the disease of chemical dependency and to outline the principles of good treatment, especially as it applies to criminal offenders.

'Chemical dependency' is a disease recognised by the American Medical Association since 1956 and is commonly referred to as 'addiction'. The chemically-dependent person is psychologically and physiologically convinced that he needs to use his addictive substance in order to cope with the demands of daily living. The majority of chemically-dependent residents who attend Tabor Lodge are 'alcoholic' (or dependent on alcohol). The other most popular drugs of choice are cocaine, cannabis, ecstasy and tranquillisers.

PIC: REX FEATURES

'Different creatures'

The 'chemical misuser' and the 'chemical abuser' are different creatures to the chemically dependent. Their relationship with the chemical is of a different order. The abuser and misuser will stop when problems start, or when exam time comes around. The dependent person will continue to use, despite negative consequences. His relationship with the substance is described as 'obsessive-compulsive'.

When the dependent person becomes preoccupied with his next opportunity to use, 'get a fix' or 'get high', he cannot alter his thought processes. He is obsessive. This leads to a craving, a thirst or a hunger for the drug of choice. This becomes intolerable for him and he can go to great lengths to ensure supply. When he begins to use, he cannot stop – he uses compulsively. He might become drunk, high or stoned. Problems accrue.

The obsessive-compulsive's relationship with the substance happens outside of his awareness. The strength of his relationship with the substance is unknown to the addict. It is only when he tries to cut down or abstain that he realises how out of control his situation has become. By then, he is addicted.

Proud to be a rebel

The path to addiction can easily lead to crime. This is obvious in cases where the use of a substance is already illegal. In addition, crime may be committed to ensure the supply of the chemical while being under its influence. The most frequently committed crimes while under the influence of mood-altering chemicals are:

- Drink-driving
- Drunk and disorderly
- Possession of illicit sub-stances
- Assault
- Domestic violence, and
- Breaking a barring order or a protection order.

Chemicals can be used to bolster those who commit crime and to help them cope with the stress it causes.

The life of addiction and the life of crime can become interlinked. Being self-centred, wanting immediate gratifica-tion, discounting the rights and feelings of others, showing no respect for the law or the value of conforming, being proud to be a rebel – all these are characteristics that sustain an identity as an addict and as a criminal.

Called to account

The principles of successful treatment for the chemically-dependent criminal offender can be enshrined in the Alcoholics Anonymous' maxim of 'tough love'. Punishment alone will not stop the pattern of criminal behaviour. On the other hand, letting such offenders off lightly is not the solution.

The first goal of successful treatment is abstinence. The second goal is change. Tough love involves an understanding and respect for the person who is suffering from a debilitating condition – while firmly calling him to account for his irresponsible behaviour. This challenges him to change his thinking, to discover ways of coping with his feelings and the stresses of daily life. It also calls him to confront behaviours that are destructive of self and of others.

addicted offenders

The real threat of punishment is best reserved for situations where there is a failure to fully comply with the rigours of a comprehensive treatment programme. This is the balance that must be struck by the services of the criminal justice system, working in tandem with the treatment services. Both are well placed to play a partnership role in helping to rehabilitate the offender.

Of course, rehabilitation takes time. A successful course of treatment for the chemically-dependent criminal offender can take upwards of two years. Following assessment at Tabor Lodge, a four to six-week period in a pre-treatment programme tests motivation and allows residents to see how strong their attachment is to their drug of choice. Admission to the 28-day, intensive, in-patient phase of treatment then begins.

Relapse has consequences

Referral to halfway house facilities – 'Fellowship House' for men and 'Renewal' for women – for three months of extended care is becoming the common path to recovery for the chemically-dependent criminal offender. Training courses with FÁS are an important part of this phase.

After that, the person continues rehabilitation on an outpatient basis, with weekly attendance at one of Tabor Lodge's 12 aftercare groups for 52 weeks. (Recommendation for a further 52 weeks is a possibility.) Regular attendance at '12 step' meetings and the practise of the '12-step programme' is also required.

It is very important that the courts monitor the full course of treatment and that the offender realises that relapse has consequences. This involves co-operation between the judge, the solicitor, the probation officer and the treatment providers.

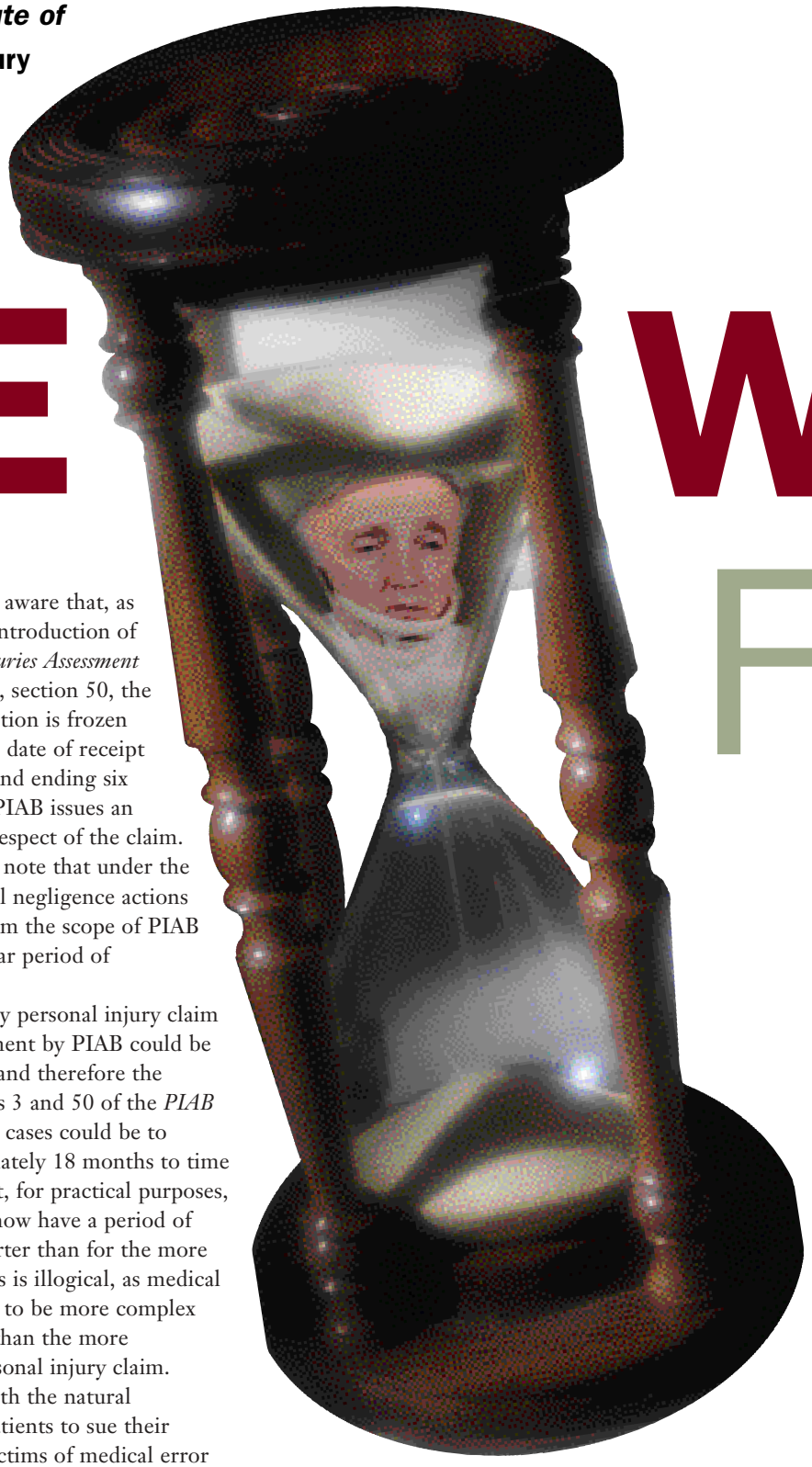
Ireland is still in the process of acknowledging the severity of the national addiction problem. Where chemical dependency and criminal behaviour co-exist, our attention is heightened. An opportunity now exists to develop a comprehensive response. Agents of the criminal justice system can play a central role in our coming to terms with this condition.

Much work remains to be done in developing this service to the point where it truly addresses the rehabilitation needs of this client group. This also requires realistic and sustained financial commitments from the Department of Health and the Department of Justice. G

Mick Devine is the director of the Tabor Lodge Treatment Centre in Co Cork.

As a result of the reduction in the *Statute of limitations* to two years for personal injury claims, it is likely that great difficulties lie ahead for victims of medical negligence and their legal advisors, warns Michael Boylan

TIME W F



MAIN POINTS

- **Statute of limitations**
- **Personal injury summons**
- **Medical negligence**

Solicitors will be aware that, as a result of the introduction of the *Personal Injuries Assessment Board Act, 2003*, section 50, the period of limitation is frozen for a time beginning on the date of receipt of an application by PIAB and ending six months after the date that PIAB issues an authorisation or waiver in respect of the claim. However, it is important to note that under the *PIAB Act*, section 3, medical negligence actions are specifically excluded from the scope of PIAB and thus will have a two-year period of limitation.

The time that an ordinary personal injury claim is likely to be under assessment by PIAB could be in the order of 12 months, and therefore the combined effects of sections 3 and 50 of the *PIAB Act* in many personal injury cases could be to effectively add on approximately 18 months to time limits. The net effect is that, for practical purposes, medical negligence claims now have a period of limitation considerably shorter than for the more straightforward claims. This is illogical, as medical negligence claims are likely to be more complex and difficult to investigate than the more straightforward type of personal injury claim. These factors, combined with the natural reluctance on the part of patients to sue their doctor – which results in victims of medical error often consulting lawyers late in the day – is undoubtedly going to cause many plaintiffs and their legal representatives sleepless nights.

The personal injury summons

As if all of that was not enough for the practitioner to contend with, there are further nightmares contained in the 2004 *Civil Liability and Courts Act*, and in particular section 10, which is the requirement that proceedings for personal injuries must be commenced by a personal injury summons. The personal injury summons is, to all intents and purposes, a long form statement of claim. The

difficulty is that the personal injury summons has to contain very detailed information on the claim, such as name, address, PPS number, detailed particulars of injury, detailed particulars of special damage, full particulars of the alleged wrong and full particulars of the negligence alleged. Complying with these statutory pleading requirements so as to stop time expiring within two years from the date of the medical treatment complained of (assuming that to be the crucial date) will be impossible in many cases. This situation will often arise when a client consults his lawyer late in the day, having initially been very reluctant to sue their doctor for the medical error.

A little knowledge is a dangerous thing

Lest practitioners become complacent and rely too heavily on the 'date of knowledge' saver contained in section 3 of the *Statute of Limitations Act, 1991*, the case of *Cunningham v Neary and Others* ([2004] IESC 43, 20 July 2004) should act as a salutary warning. In that case, the negligent treatment complained of occurred in 1991. A supportive medical expert report was not available to the plaintiff's solicitor until April 2001 (some 11 months after first being instructed), and proceedings were issued in March 2002. The plaintiff's solicitor, among other things, was relying on the principles outlined in the Supreme Court decision of Denham J in *Cooke v Cronin* ([1999] IESC 54) to the effect that it would be an abuse of the process of court and misconduct to issue proceedings until a supportive expert report was received. On the facts of *Cunningham*, the Supreme Court held that the statute had begun to run no later than 19 December 1998, when the plaintiff had written a letter of complaint to the Medical Council.

The rationale of the court's decision was that once she had decided to make the complaint to the Medical Council she had the requisite knowledge and it was reasonable for the plaintiff at that time to seek medical and other expert advice. Therefore, time began to run from that moment. The Supreme Court rejected the argument that time only began to run from the date that the plaintiff received a supportive expert report and thus, in the event, the claim was statute-barred by approximately 12 weeks.

Damned if you do and damned if you don't

In my opinion, it would be very unwise for a practitioner, in light of *Cunningham*, to assume that 'date of knowledge' can always be postponed until such time as a supportive expert report has been sought and received. Furthermore, the Supreme Court findings in *Cunningham* place the practitioner in a serious dilemma. Does the practitioner simply now ignore the strictures of Denham J in *Cooke* and assume that they must issue proceedings to preserve their client's statutory rights, even though they have not yet obtained a supportive report? Will the court criticise such tactics and characterise them as professional misconduct, as suggested in *Cooke*?

In any event, section 10 of the *Civil Liability and Courts Act, 2004* now appears to pose a major practical difficulty barring a practitioner from adopting such a tactic. It will now be very difficult for the plaintiff to issue proceedings to prevent the statute from running without an expert report, given the amount of detail now required in a personal injury summons. If a plaintiff is brave enough to try and plead particulars of negligence in a medical negligence action without an expert report, in the expectation of being able to mend their hand at a later stage by applying to court to amend the pleadings, he could be in for a rude awakening. He may not be permitted to do so, or only permitted to amend pleadings under penalty of costs. The Supreme Court has reviewed the law relating to amendment of pleadings and recently refused liberty to a plaintiff to amend his statement of claim to include claims of serious misconduct and fraud against a professional

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person acting in their professional capacity (see *Croke v Waterford Crystal Ltd & IPT*, Supreme Court, 27 November 2004).

Inordinate and inexcusable delay

Even if a plaintiff is fortunate enough to postpone the point at which time starts to run by coming within the 'date of knowledge' saver in section 3 of the 1991 *Statute of Limitations Act*, they may still fall foul of a defence application to have proceedings stayed if the action is brought many years after the treatment complained of. The authorities confirm that the court has inherent jurisdiction to stay proceedings where there has been delay or lapse of time in bringing the action, even if brought within the statutory time limit and even where the plaintiff was acting under a disability. The defence argument is that, although the action is not time-barred, the passage of time has made it impossible for the defendant to get a fair trial and the balance of justice requires the granting of an order staying the proceedings. In my experience, these types of applications are increasingly common and are being sympathetically entertained by the courts. For example, see the recent Supreme Court decision in *Keogh v Wyeth Laboratories Ltd* (12 July 2005).

The lawyer's dilemma

The *Statute of limitations* is now likely to be pleaded by defendants in every case where proceedings are not brought within two years of the medical treatment complained of, leading to trials of preliminary issues in most medical negligence actions. As a consequence, extra costs, extra worry for meritorious plaintiffs (never mind their lawyers!) and delay in the final conclusion of the litigation will often occur. This would be ironic, because it would be the direct opposite of the stated aim of Minister McDowell to reduce costs.

When a client's medical negligence claim is about to become time-barred, his solicitor's choice is between, on the one hand, waiting for receipt of a supportive medical expert report so as to avoid an accusation of professional misconduct and to ensure accuracy of pleading and, on the other hand, launching proceedings without such a report as a protective measure to preserve a client's rights. Which option should the solicitor take? This is certainly a dilemma for the solicitor, who is an officer of the court and obviously cannot be party to an abuse of the process of court. On the other hand, a solicitor clearly owes a legal professional duty to his client and is obliged to take steps to preserve a client's legitimate rights of access to the court.

My opinion, which I readily admit could be erroneous and frowned upon by the court, is that the lesser of two evils must be to serve the client's interests first of all and issue the proceedings, so as to preserve his constitutional right of access to justice. Surely, in such circumstances, the courts will have to be sympathetic and accept a solicitor's *bona fides*. The rules of court surely are there to serve the

constitution and justice and not to impede it? The practical option, in my view, is to issue the proceedings as a protective step and to not serve the proceedings until such time as the claim has been properly investigated and a supportive expert opinion obtained. Why otherwise would the Superior Courts Rules Committee have incorporated a proviso that seemed to envisage just such a scenario into the new statutory instrument relating to pleadings, albeit one that is not apparently contemplated by section 10 of the act itself?

New rule

The rules committee has adopted a new order 1A that clearly appears to contemplate a plaintiff issuing a personal injury summons, without all of the requisite information demanded by section 10 being inserted in the summons, and later providing the missing information by way of amendment. SI 248 of 2005, *Rules of the superior courts (personal injuries) 2005*, order 1A II, 'Commencement of proceedings', rule 6, reads as follows:

"Where a plaintiff alleges that he was unable at the time at which a personal injury summons was issued to include in the personal injuries summons any information required by this order to be specified in the personal injuries summons, he shall include in the personal injuries summons a statement of the reasons why it is claimed that any such information could not be provided at the time of issue of the summons. The plaintiff shall, at the time the personal injuries summons is served or as soon as may be thereafter (whether by amendment or otherwise), provide such of the information required by this order as was not included in the personal injuries summons."

One must assume that many plaintiffs and their lawyers will be citing this rule on many occasions in the future and using it to preserve their clients' claims that would otherwise fall foul of the statute. I just hope that the courts will be lenient to plaintiffs when applications are subsequently made, perhaps much later, to fundamentally alter the nature of the allegations in the personal injury summons whenever the claim has been properly investigated. G

Michael Boylan is partner in the Wicklow law firm Augustus Cullen & Son.

The continued incarceration of the 'Rossport Five' has placed the public spotlight on the law of contempt of court. Pamela Cassidy looks at the history of contempt and argues that the courts have little discretion as to sanction

HIGH-DEA

The continued incarceration of the 'Rossport Five' has focussed a level of public attention on the law of contempt of court, perhaps not seen since Charles Stewart Parnell sat on the Gray Indemnity Committee defending *The Freeman's Journal*. The committee met in 1882 and challenged "The Power of Judges to Punish for Contempt of Court as exemplified by the case of the High Sheriff of Dublin".

The current public debate is constrained by the *sub judice* rule in respect of undecided issues. The Rossport Five are back before the president of the High Court on 4 October, where they will be represented by senior counsel.

The background facts are well known. Shell E&P Ireland Limited has obtained a series of permissions to exploit the Corrib gas field in an on-shore site in north Mayo. This involves the installation of a high-pressure pipeline, despite objection by local landowners.

Shell obtained an order from the High Court on 4 April this year restraining protesters from obstructing access to its compound at Rossport. Dialogue failed to resolve matters. The protests continued and, in the week of 20 June, Shell obtained a temporary injunction.

On 29 June, Shell sought orders for committal for contempt against five Mayo farmers: Philip McGrath, his brother Vincent McGrath, James Brendan Philbin, Willie Corduff and Micheál Ó Seighin. They had, said Shell, breached the injunction.

Disobedience to a court order in civil litigation is classified as civil contempt. The sanction is imprisonment *sine die*, that is, indefinitely, unless and until the contemnor purges his contempt. The reason is that the sanction is said to be coercive, not punitive. The contemnor, it is said, holds the key to his own cell.

Blaze of publicity

This was explained to the five. They refused, nonetheless, to give undertakings not to engage in further breaches of the court order. Representing themselves, they expressed health and safety concerns over the high-pressure onshore pipeline linking the Corrib gas field to an onshore terminal.

Philip McGrath told the court that the proposed pipeline was just 70 metres from his house, that he was "living in fear" for his safety, and would have to leave if the high-pressure pipeline was built as planned.

His brother Vincent McGrath, saying that he did not want to be "a guinea pig for Shell", said that he lived just 20 metres from the proposed pipeline, and that no state body was taking responsibility for his safety.

Willie Corduff, accusing Shell of bullying tactics, said he was stressed, not sleeping at night, and "begging for justice".

The five were committed to prison in a blaze of publicity.

Courts do not willingly commit persons to jail for civil contempt. The late Mr Justice O'Hanlon refused to order the committal for contempt for breach of a court order involving trespass in the 1981 case of *Ross Co Ltd v Swan*, because there was a reasonable alternative: prosecution under the *Prohibition of Forcible Entry and Occupation Act, 1971*. Case law reflects a history of such caution. In 1877, the English master of the rolls urged that:

"*… this jurisdiction of committing for contempt being practically arbitrary and unlimited should be most jealously and carefully watched, and exercised … with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode … which can be brought*

MAIN POINTS

- **Sanctions for civil contempt not punitive**
- **Courts do not willingly jail people for contempt**
- **Difficulties of obdurate, campaigning contemnors**

PIC: PHOTOCALL IRELAND

Protest in support of the Rossport Five in Dublin in July

PRESSURE DLOCK

to bear upon the subject … I have always thought that necessary though this [jurisdiction] *be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found."*

This anxiety was echoed in the actions of the president of the High Court, who addressed the men on the morning after the committal to give them time to reconsider, and is also manifest in the continued access the men have had to the High Court.

Although they have been urged to do so, Shell has publicly maintained that they cannot withdraw their proceedings without gravely affecting their legal rights to progress the Corrib project. It appears, therefore, that waiver is not an option under consideration.

The obdurate, campaigning contemnor is the litigator's worst nightmare. Adverse publicity, the effect of the litigation on commercial contracts, on staff, and on the perception by the general public of the aggrieved party, may all lead in the end to an own goal for the party who seeks a committal for contempt.

That party is not, incidentally, entitled to any financial compensation. The law of contempt is not there to offer him that solace. For the contemnor and his family, the cumulative effects of imprisonment, separation, periods of inaction and absence from work can be little short of devastating. Neither party can want the incarceration to continue. Nor does the judiciary.

The wider issues brought into focus by the case are whether it is necessary or desirable today, particularly in the context of articles 6 and 10 of the *European convention on human rights*, to deprive the campaigning citizen of his liberty. If so, is it appropriate or necessary to impose an indefinite sentence of imprisonment, and particularly one which leaves the judiciary without the discretion to say: "enough is

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enough, no further purpose can or will be served by further imprisonment?" A third issue is the extent to which a waiver by the person aggrieved is sufficient to purge the contempt.

Sine die, or indefinite imprisonment, was a product of the old English Court of Chancery practice of acting *in personam*. The official solicitor was required, by standing direction of the lord chancellor, to monitor and review the cases of those committed for contempt.

This history and practice were reviewed by the English Phillimore Committee in its 1973 report on contempt of court. The committee recommended the abolition of *sine die* committal, as leading to inconvenience and uncertainty in practice.

It argued that *"obstinate contemnors have to be released eventually, despite non-compliance. A fixed term would save the appearance of a climb-down by the court and would obviate the need for an application for release and uncertainty as to the appropriate timing"*.

It recommended that fixed terms of imprisonment be imposed in all cases. This recommendation was implemented in section 14 of the *Contempt of Court Act 1981*, where periods of imprisonment of up to two years could be imposed by the superior courts; or up to four weeks in the case of an inferior court.

As to whether imprisonment at all is desirable in today's Ireland, and whether waiver is relevant or has an element of public interest, two contrasting cases merit examination. In the 1973 Supreme Court case of *Keegan v de Burca*, the then chief justice said that: *"Civil contempt is not punitive in its object but coercive in its purpose of compelling the party committed to comply with the order of the court and the period of committal would be until such time as the order is complied with or until it is waived by the party for whose benefit the order was made."*

A later Supreme Court, however, concluded that the sanction included a punitive element: *"It cannot be said that a sentence imposed in respect of contumelious disregard of the orders of the tribunal and High Court is coercive only in its nature"* (*Flood v Lawlor*, unreported, December 2001).

The English authorities are also divided on the issue – some suggesting that public policy may override the wishes of the parties.

Attack on justice

Civil contempt does not merely involve the rights and wrongs of the parties before the court. It also involves an attack on the administration of justice. The judge must, and indeed will, act instinctively to protect the administration of justice, particularly where the public impact of disobedience is high. To this extent, it can be argued that the sanction is punitive as well as coercive.

If court orders are not respected, the courts cannot protect the rights of either party and the rule of law fails. This thinking is expressed in the first modern authority on the common law of contempt, the undelivered but widely adopted judgment of Mr Justice Wilmot in *The King v Almon*, written in 1765: *"The issuing of attachments by the Supreme Courts of Justice in Westminster Hall, for contempts out of Court, stands upon the same immemorial usage as supports the whole fabrick of the Common Law; it is as much the* lex terræ *and within the exception of* Magna Charta, *as the issuing any other legal process whatsoever."*

The modern rationalisation is less dramatic: *"The provision of … a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. 'Contempt of court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law, which tends to undermine that system or to inhibit citizens of availing themselves of it for the settlement of their dispute"* (*AG v Times Newspapers Ltd* [1974] AC 273).

And: *"Today it is no longer appropriate to regard an order for committal as being no more than a form of execution available to another party against an alleged contemnor. The court itself has a very substantial interest in seeing that its orders are upheld"* (Lord Woolf MR in *Nicholls v Nicholls* [1997] 1 WLR 314).

'Obstinate contemnors have to be released eventually, despite non-compliance. A fixed term would save the appearance of a climb-down by the court'

Delicate balance

The Irish Law Reform Commission took a different view to the Phillimore Committee on the issue of an open-ended sanction. They looked first at whether imprisonment was ever appropriate and: *"… tentatively concluded that the case for its abolition as such a sanction had not been established. The question, however, as to whether imprisonment for civil contempt should continue to be open-ended was somewhat more complex. Having examined the arguments for and against, we came to the tentative conclusion that the balance of the argument was against the introduction of a fixed term of imprisonment to deal with the coercive function of civil contempt. We were of the view that it would introduce an added potential for injustice for no substantial gain."*

Without statutory reform, the courts have little discretion as to sanction – and perform a delicate balancing exercise as to where the public interest lies in case of waiver. G

Pamela Cassidy is a partner in BCM Hanby Wallace.

WHAT THE ECHR SAYS

Article 6 extracts:

6.1.1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 10 extracts:

10.1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority …

10.2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society … for the prevention of disorder or crime … or for maintaining the authority and impartiality of the judiciary.

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AGE-OLD PROBLEM

The unanimous decision of the Supreme Court in relation to *A, B, C v Ireland, AG & DPP* signifies a substantial change in Irish law. Edel Kennedy examines the defence of 'mistake as to age' relating to sexual offences committed on young girls

The recent unanimous decision of *A, B, C v Ireland, AG & DPP* signifies a substantial change in Irish law. Essentially, this appeal to the Supreme Court from the High Court by way of judicial review ruled that, what was once a strict liability offence relating to sexual offences committed on young girls, could now be interpreted as one to which a defence now exists. Namely that the defendant can claim that he was mistaken as to the age of the girl.

This article concentrates on B's decision, since A's appeal is awaiting further argument regarding the constitutionality of section 1(1) of the *Criminal Law (Amendment) Act, 1935*, and is adjourned for this purpose until after October.

B's appeal resulted in a unanimous decision by the Supreme Court in favour of B that, on the grounds of the interpretation of the statute under which he is charged, there should be available to him a defence of honest and reasonable mistake as to the age of the girl.

The assumption existed that sexual offences relating to young girls were in a special category, to which the presumption of *mens rea* did not apply. *R v Prince* was one of the cornerstones of this approach. The impact of the *Prince* decision is that a man is strictly liable when the girl is under the age of consent.

Protecting young girls

The governing legislation regarding sexual intercourse with girls under 17 years is rendered criminal by ss1 and 2 of the *Criminal Law (Amendment) Act, 1935*. Under s1(1), it is a felony, punishable with a maximum sentence of penal servitude for life, for a man to have unlawful carnal knowledge of a girl under the age of 15 years.

An attempt to commit this offence is a misdemeanour (s1(2)) punishable with a maximum of five years' penal servitude in the case of a first offence and a maximum of ten years in the case of a second or subsequent offence.

PIC: PHOTOCALL IRELAND

Neither mistake on the part of the male as to age, nor consent on the part of the female, would afford any defence. The irrelevance of consent was emphasised in the case of *AG (Shaughnessy) v Ryan* ([1960] IR181) by the Supreme Court, whereby an appeal was made against conviction for attempted unlawful carnal knowledge contrary to s2(2).

Maguire CJ stated that this section and similar provisions of other earlier acts "were designed to protect young girls, not alone from lustful men, but from themselves". He held that consent by the complainant did not constitute any defence for the accused.

Indeed, the most severe feature of the offences under the 1935 act is that mistake on the part of the defendant as to the girl's age will afford him no defence. This was not always the case, as these offences were previously governed by the *Criminal Law Amendment Act 1885*, which stated that a male charged with unlawful carnal knowledge of a girl between 13 and 16 years had a defence if he had

MAIN POINTS

- **Defence for a once strict liability offence**
- **Mistake as to age**
- ***Mens rea* is now applicable to the offence of sexual assault**

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CASE SUMMARY

***A , B, C v Ireland, The Attorney General and The Director of Public Prosecutions*, Supreme Court, 12 July 2005**

A – appellant charged with four offences contrary to section 1(1) of the *Criminal Law (Amendment) Act, 1935* in respect of four incidents of alleged unlawful carnal knowledge of a female under the age of 15.

B – appellant facing trial on two counts of sexual assault on a young girl aged 13 years of age "contrary to section 2 of the *Criminal Law (Rape) (Amendment) Act, 1990*, as amended by section 37 of the *Sex Offenders Act, 2001*."

Consent would normally be a defence to a charge of sexual assault, but by virtue of section 14 of the 1935 act, consent is no defence if the complainant is under 15 years of age.

Each appellant wanted to raise at his respective trial the defence that he made a *bona fide* error as to the age of the respective complainants; that is, each appellant wanted to put forward a defence that he believed the relevant complainant to be over the age of 15 years.

The 'mistake as to age' issue arose on an appeal from the High Court to the Supreme Court in respect of judicial review proceedings by each applicant.

Substantive issues

B – section 14 of the *Criminal Law (Amendment) Act, 1935*: stated as meaning that, notwithstanding the existence of consent, the acts that would otherwise be an assault constitute an assault of the complainant if under the age of 15 years.

Issue to be considered: what is to happen if a defendant genuinely believes that the complainant is 15 years or more at the time of the offence? Does it mean that there can be no conviction given the absence of *mens rea*?

Geoghegan J considered section 14 irrelevant to the issue: *"It would seem to me that just because consent would be no defence by virtue of section 14, it does not at all follow that absence of* mens rea *in the form of a genuine* bona fide *mistake as to age would be no defence."*

"Jurisprudence of the Irish courts has always been that indecent assault was a common law offence".

Geoghegan J then stated accepted principles that *mens rea* was applicable to the offence of sexual assault: *SO'C v Governor of Curragh Prison* ([2002] IR) – indecent assault/sexual assault is a common-law offence; "*mens rea* must be considered to be the necessary ingredient of all serious offences."

Denham J:

- *R v Prince* is bad law and cannot be sustained in the light of *DPP v Murray*
- There had been an assumption that sexual offences relating to young girls were in a special category to which the presumption of *mens rea* did not apply. *R v Prince* was one of the cornerstones for this approach
- *R v Prince* stated as not having survived into Irish common law
- "The common law presumption requiring *mens rea* in a criminal offence applies to this common-law offence of sexual assault and, consequently, the defence of mistake is available to the applicant."

B – Geoghegan J, in one of two written majority judgments, said that the concept that *mens rea* was disregarded in the case of sexual offences with young children, notwithstanding a genuine mistake as to age, derived from an 1875 English case, *R v Prince*, which held that a genuine belief as to a girl's age was no defence. This case has since been heavily criticised.

Mr Justice Geoghegan accepted the principles set out by English and Irish judges that *mens rea* was applicable to the offence of sexual assault, for example, *Regina v K* ([2002] AC).

B – the Supreme Court unanimously ruled that B, charged with sexual assault of a 13-year-old-girl, may claim at his trial that he was mistaken as to the age of the girl. B claims he had consensual sexual activity with the girl. The onus of proof was declared by the court as a matter for the trial judge and/or jury.

A – by a majority of four to one, the court rejected a claim by A, charged with unlawful carnal knowledge of the same girl, that a similar defence was open to him and that he was entitled to plead that he 'reasonably believed' that the girl was over 15.

The court expressed the wish for further argument as to whether section 1(1) of the *Criminal Law (Amendment) Act, 1935* is inconsistent with the constitution.

This aspect of the appeal is adjourned for this purpose. The submissions time limit is October for the prosecution. A hearing date will be decided at a later date.

reasonable cause to believe that the girl was of, or above the age of, 16 years. No such defence exists under the 1935 act.

Rejection

Essentially, the success of B's appeal signifies a rejection of *R v Prince*. B's decision states that *mens rea* is applicable to the offence of sexual assault. B was charged with two counts of sexual assault, contrary to section 2 of the *Criminal Law (Rape) (Amendment) Act, 1990*. The applicant wished to make the case that he engaged in sexual activity with a 13-year-old girl, but believed that she was 17 years old. The legal stance was such that the prosecution need not prove *mens rea*. Even if the applicant had no reason to suspect that the girl was less than 15 years of age, and made all reasonable efforts to check her age, he would be guilty of the offence.

B's submissions argued that serious strict liability offences violate constitutional rights, as supported by *Re Employment Equality Bill, 1996* (1997) and *People (DPP) v Murray* (1997), and that the violation was not proportionate to the objective.

The protection of young girls less than 15 years of age from sexual activity has always been an important public policy objective, but the question was submitted as to whether this was sufficient justification to exclude the defence of mistake and to deny the requirement of proof as to *mens rea*. G

Edel Kennedy is a trainee solicitor with the Dublin law firm Partners at Law.

Ahead of the

The Law Society retirement trust scheme's long-term performance continues to outshine its peers, writes Carina Myles

MAIN POINTS

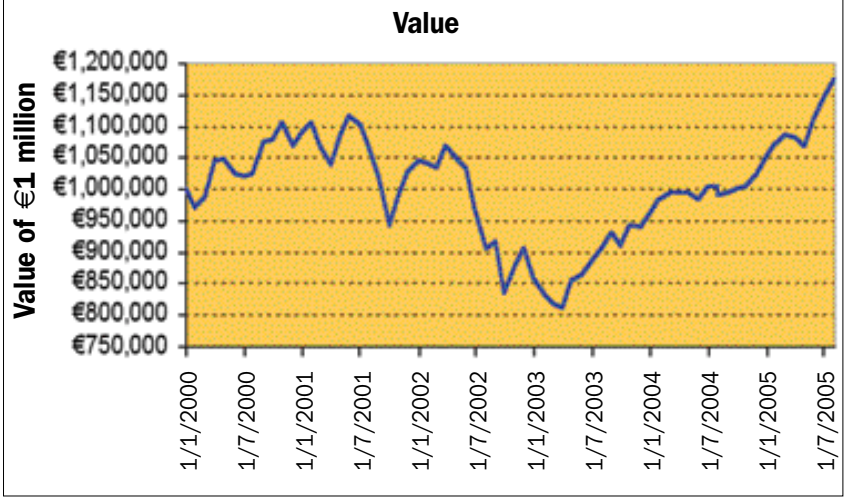
- Pension planning
- Law Society retirement trust scheme
- Market review

It's hard to believe now, but back in April 2003 the Law Society retirement trust scheme (RTS) fund had fallen 27% from its high in June 2001. The decline in fund values was caused by the bursting of the technology bubble and the attacks of 11 September. Other segregated managed funds experienced very similar losses during this time frame.

The graph depicts the path of one of the worst bear markets in history. The as yet untold story is how these funds recovered in a very short period of time. By June 2005, your fund recovered the losses experienced in this period – a significant achievement considering the short time frame involved (two years). In this two-year recovery period, your fund increased by 37%.

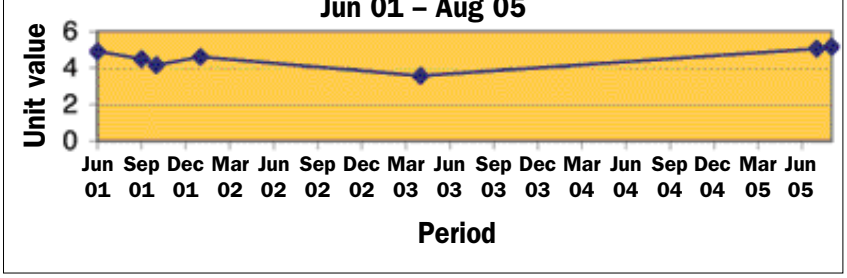
It is recommended that pension investors take a moderate degree of risk over the long term. In the case of the Law Society RTS, the four-year cycle from the original June 2001 high to its June 2005 recovery shows that professionally advised portfolios can withstand dramatic downturns over a short period so that longer-term real return objectives are not compromised. Diversification of asset classes (split, for example, between equity, property, bonds and cash) is the most important determinant of success in the long run – that is, ensuring that accurate and timely payments of benefits occur at lowest present value cost.

VALUE OF €1M INVESTED ON 1 JANUARY 2000



(Source: Law Society RTS pricing figures, 2001-2005)

LAW SOCIETY RTS PERFORMANCE SNAPSHOT



Long distance effort

Pension fund asset management is a marathon, not a sprint. If we compare fund performance relative to other segregated funds in the market, the Law Society RTS has exceeded the manager average in the four to ten-year period. This higher relative return stands, despite more recent short-term relative underperformance over the one and three-year periods to the end of December 2004. Positive returns in 2003 (11.9%), 2004 (9.4%) and the seven months to July 2005 (11.6%) have led to the consistency of the RTS delivering above-average performance in the long term.

As well as the relatively strong performance, the scheme is also among the most cost-effective available in the Irish market. With up-front charges amounting to 2.5% (that is, 97.5% invested) and on-going fees of typically 0.5% per annum, investors in the scheme start with something of an advantage compared to the competition, particularly when compared with annual management fees of 1% to 1.5% a year that typically apply in the market.

We can see a few interesting points in the behaviour of this fund over the last number of years:

- A sharp drop in markets can be recovered over a relatively short period of time

Bear: in training to meet the bull

ANNUALISED SEGREGATED MANAGED FUND RELATIVE RETURNS TO 31 DEC 2004 (before fees)

Fund	One year	Three years (pa)	Four years (pa)	Five years (pa)	Ten years (pa)
Law Society RTS	**9.8**	**0.6**	**-0.5**	**1.4**	**10.9**
AIBIM	11.0	-1.1	-2.4	-1.5	9.1
BIAM	11.1	2.9	1.8	3.2	11.6
Eagle Star	12.5	1.8	-0.1	-0.7	n/a
Friends First (F&C)	10.6	0.9	-1.1	-1.0	n/a
Irish Life	12.6	1.6	0.4	1.4	9.9
KBC AM	7.9	-2.3	-3.2	-2.3	9.0
Montgomery	12.1	2.8	1.3	1.0	11.0
Oppenheim					
Standard Life	12.2	0.6	-1.0	-1.2	9.5
Average	**11.3**	**0.8**	**-0.7**	**-0.1**	**9.9**

Source: Performance and Risk Managing Service, December 2004

- A properly diversified fund assists in the recovery process
- It is the journey, not the destination, that is key.

General market review

The first six months of 2005 saw strong returns in equity, property and bond markets:

- Global equity markets rose by approximately 8% on average
- Property markets continue to forge ahead, with an expectation that yields have compressed by up to 0.25% in major capitals
- Bond markets continue to make gains in Europe and the US
- There have been strong gains in most managed funds (typically 7-9%)

Despite further increases in oil prices, most equity markets made decent gains, even if the energy sector

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PUBLIC NOTICE

New Security Arrangements for the Four Courts Complex

From October 3rd 2005 new security arrangements will be introduced on a phased basis at the Four Courts Complex, Dublin 7.

Under the new arrangements there will be only one public entrance and exit to and from the Four Courts, Áras Ui Dhálaigh, the Land Registry, the Law Library and the Law Society. These will be located on Inns Quay at Morgan Place between the main Four Courts building and Áras Ui Dhálaigh – See map marked A.

There will also be only one public entrance and exit to and from Circuit Courts Numbers 24, 25 and 26. These will be located at Chancery Place – See map marked B.

All persons using these public entrances will have their bags scanned by x-ray machines and will have to walk through airport style scanning equipment.

Solicitors and trainee/apprentice solicitors who have been issued with ID/security access cards will be able to access the Four Courts Complex through separate kiosks by using their cards – See map marked X.

All court users are asked to cooperate fully with the instructions of the security personnel attached to these new security booths.

Please arrive at least ten minutes early to allow for the smooth operation of these new security measures and to assist us in keeping any disruption to a minimum.

LAW SOCIETY RETIREMENT TRUST SCHEME

The Law Society retirement trust scheme is the group personal pension scheme set up as a service to members.

Retirement scheme by the numbers:

- Current value of the scheme: €163.8m
- Number of solicitors in the scheme: approximately 900
- Scheme trustee: Governor & Company of the Bank of Ireland
- Investment managers: Bank of Ireland Asset Management manages the cash fund, long-bond fund and all-equity fund and 73% of the managed fund; KBC Asset Management manages 27% of the managed fund
- Initial charge: 2.5% of each contribution
- Annual fee: 0.5%* (this includes all trust services and investment fees).

*(*Based on managed fund actual annual costs averaged over the past four years. These may vary from year to year. Different fee rates apply to each fund.)*

What you need to know

- All gains/losses on investments are passed on directly to scheme members – there is no discretionary element
- No member of the Law Society knows who the members of the retirement trust scheme are. This information is strictly confidential to the trustee
- No charges of any kind are charged by or paid to the Law Society.

Tax relief information

The latest date for investing for the 2004 tax year is 31 October 2005. All cheques must be with Bank of Ireland Trust Services by 5pm on Friday 28 October (as 31 falls on a Monday this year)

Full tax relief may be claimed annually on pension contributions up to the following limits:

Under 30 years	15% of net relevant earnings**
30-39 years	20%
40-49 years	25%
50 and over	30%

*(**There is a cap on earnings of €254,000 a year. For example, a 50-year-old can therefore claim full tax relief on contributions of up to €76,200 pa.)*

For more information, log onto *www.lawsociety.ie* for a copy of the retirement scheme booklet or contact Brian King or Lynne Forsyth at Bank of Ireland Trust Services, 40 Mespil Road, Dublin 4; tel: 01 637 8770/637 8811), for a booklet, application form or any details you might require.

Elma Lynch, chair of the Solicitors' Retirement Fund

has been at the forefront. Equally, Europe has been following the example of last year's Ryder Cup team in significantly outperforming the US. Relatively attractive equity valuations, a more benign Euro area interest rate environment and the enticement of the accession state markets has proved a major draw for investors so far this year.

European equities rose by over 12% since the start of the year, while the US equity markets were broadly unchanged. The strength of the dollar was the saving grace for European investors, as it rose by nearly 10%.

Asian and emerging markets, while more volatile, were very strong performers so far this year, helped by the buoyant nature of the Chinese economy.

The fact that oil prices rose by over 60% during this period makes the performance of global equity markets even more impressive.

At the start of the year, key measurements were all pointing towards rising inflation, and hence rising interest rates. In this environment, bond markets will not tend to perform well. However, bonds have done reasonably well in 2005, particularly in 'Euro land' as this economy continues to struggle.

Commercial property

The majority of commercial property markets across Europe continued to perform well over the first six months of 2005. The weight of money allocated by institutional investors to commercial property, together with the current low rates for long-term borrowing, has resulted in demand continuing to outstrip supply. G

Carina Myles is a pensions specialist at Bank of Ireland Private Banking Limited.

EMERGEN

The Law Society's Guidance and Ethics committee has been considering the problems that arise for practitioners and their families when there is an emergency in a practice. John Costello encourages solicitors to plan ahead

MAIN POINTS

- **Planning for emergencies in your practice**
- **Law Society's responsibilities**
- **Sample clauses for a sole practitioner's will**

No one of us know when we may become ill or when, for other reasons, we will be unable to attend our offices. As prudent business people, solicitors should consider such eventualities and have a practical plan in place that can be triggered immediately a crisis occurs. This applies to all solicitors, but particularly to sole practitioners and sole principals. Emergencies in practices are happening all the time.

The essential element of any plan is an agreement with another solicitor to take charge if an emergency occurs. This does not necessarily mean that the solicitor will be required to become involved in the day-to-day running of the practice. But it does mean that another solicitor will have the necessary authority to make decisions and carry out any necessary functions in relation to the practice. For instance, the solicitor would be authorised to take charge of the client accounts so that monies can be paid out to clients who need their funds. Otherwise, there would be no access to the clients' monies if the only cheque signatory is not available.

What happens to files and other documents?

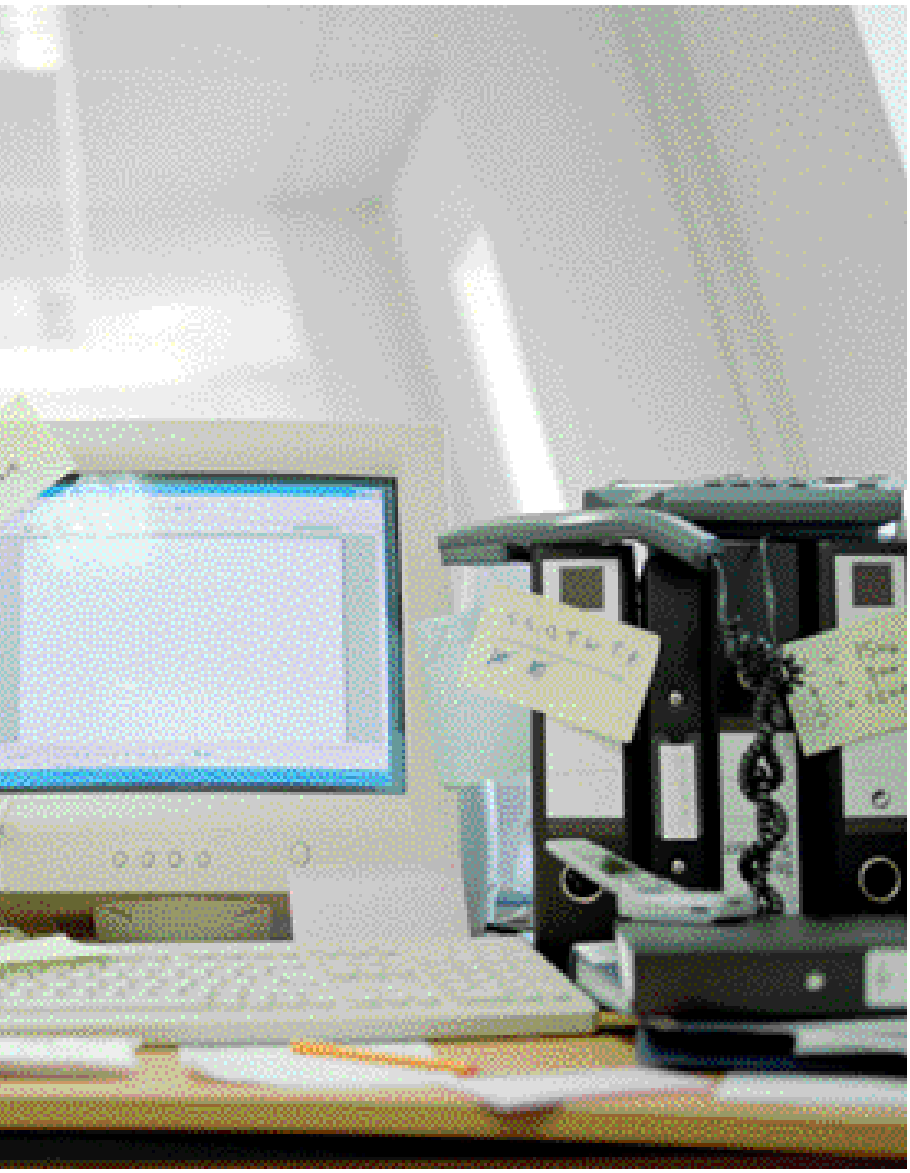
The expectations of the clients of a solicitor's firm are that anything entrusted to the solicitor is confidential and secure, whether this is information contained in files, on the one hand, or deeds or other property on the other. A solicitor holds him or herself out as giving an assurance that everything will be under the control and supervision of a licensed solicitor, that is to say, a solicitor holding a current practising certificate.

Usually in the normal course of practice, no problems arise in relation to files or other client records. However, if an emergency occurs – such as the illness of a sole practitioner, so that he or she cannot carry out any functions in relation to the practice – that situation might change. The files might no longer be secure. Third parties who should not have access to the premises might gain access. The clients' affairs might be neglected so that they might be unable to get access to their files to progress their business, with the result that they suffer loss. The Law Society must then intervene (see **panel**, page 27).

What happens to completed files?

When a solicitor dies, the solicitor's family sometimes makes a decision to deal with as many matters relating to the practice as possible, because it cannot afford to employ another solicitor to deal

CY EXITS



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with it. This is not appropriate. It might do this even though there are no solicitors in the family and it may never have been involved in the practice.

The responsibility for disposing of the files of a solicitor's practice is an inappropriate and intolerable burden for solicitors to leave to their families. The family might then have to make decisions about large volumes of completed files, some of which might contain wills or deeds. If the files are stored at home and the property must be sold, this becomes a huge problem. Undoubtedly, there have been many occasions when families have decided to destroy everything rather than leave confidential files to be seen by others. To have a proper destruction exercise carried out by a firm of solicitors would be a significant expense, always presuming that a firm could be found who were willing to undertake the task.

There was an instance many years ago where the elderly wife of a solicitor who was suffering from Alzheimer's disease felt duty-bound to get each file in the mountain of files that were stored in their home back to the clients. She did not realise that most of these files were completed files and could have been destroyed. Day after day, she took out a few files and checked for the last address on the file. She then drove to that address with the file. She had a very low success rate in making contact with the owners of the files. She continued with this futile exercise until ill health prevented her from doing so any longer.

All solicitors who are principals of firms should plan for the sale or wind-up of their practice by taking a sensible attitude to the destruction of files and carrying out on-going destruction exercises in accordance with the Law Society's guidelines.

Who will sell the practice?

Often when an emergency occurs, the best option for the solicitor or, if deceased, his or her personal representative, is to sell the practice as a going concern. The practice may be a valuable asset. Again, if there is no one who has authority to make a decision to sell and to make the necessary arrangements, the only alternative is to wind up the practice. The value of the goodwill is then lost.

All solicitors who are proprietors or who might be asked to assist another solicitor's family should be prepared for the eventuality of being involved in the sale of a practice. Accordingly, they should know how to set about valuing and marketing a practice.

Taking action

If you are a sole practitioner or sole principal, decide today that you will plan for emergencies in your practice. Decide on a timescale within which you would hope to have such an arrangement in place. Distinguish between arrangements that are to be triggered while you are still living and arrangements to be triggered on your death. You then need to consider solicitor colleagues who might be willing to make an arrangement with you.

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LAW SOCIETY'S RESPONSIBILITIES

The Law Society is required by law to regulate solicitors' practices. The principal purpose of regulation is the protection of clients' interests. If the Law Society becomes aware that a firm is not in the control of, or under the supervision of, a solicitor with a current practising certificate, it must take action in relation to the matter, in the interests of the clients.

However, there is only a limited range of options within the society's statutory powers. The Law Society has no power to run a practice or keep an office open, nor, as the regulatory authority, would it be appropriate for them to do so. The Law Society cannot appoint a locum. If a solicitor is not on hand who is authorised to make decisions in relation to the practice and clients are clearly suffering a loss because they cannot progress their affairs, the practice might have to cease trading. It would then be wound up and the clients asked to nominate new solicitors. This is now a more frequent occurrence and would typically happen several times a year.

It is recognised that this might not be in accordance with what the principal would have wished. For instance, the solicitor might suffer an episode of severe depression. However, he or she might recover in the medium or even short term and wish to resume practice. Sometimes the appointment of a locum to the practice for a short period would be a good temporary arrangement until the position becomes clearer.

If the solicitor has died, the wishes of the solicitor might have been that the practice would continue. Again, however, the Law Society might have to wind up the practice if clients are suffering loss and if there is no one willing to, or with the necessary authority to, make decisions in relation to the practice.

When the Law Society winds up a practice, considerable expense is incurred in removing the files and other documents from the practice and arranging the redistribution of the files to new solicitors nominated by the clients. There are also on-going storage and other expenses. The *Solicitors Acts* provide that these expenses are a debt due by the solicitor or his estate to the society.

You should make the necessary approaches to them and get agreement with one, or two if preferred, about the arrangements.

Handing over authority

Irish legislation allows any solicitor holding a current practising certificate to be in charge of a solicitor's practice.

The authority to be given to the second solicitor will be a matter for agreement between the two solicitors. It may be possible to enter into a reciprocal, relatively informal, arrangement with another solicitor in the locality. Alternatively, a solicitor can draw up, or employ a firm to draw up, documents to give effect to the arrangements.

During the life of the first solicitor, the second solicitor could simply be asked to act as a locum with authority to make all decisions in relation to the practice, after consulting with the family as appropriate. The second solicitor could be given a power of attorney. However, there are circumstances in which this would not be effective, such as the first solicitor's mental incapacity.

Finally, another arrangement could be that the ownership of the firm would actually transfer to the second solicitor in certain circumstances. However, if there are, or could be, significant liabilities attached to the firm, this would not be advisable.

Practical matters

Both solicitors should come to a decision as to what level of information about the firm the second solicitor should be given immediately. Drawing on the New Zealand model (see **panel**, right), here are some suggestions as to what the second solicitor will need to do:

- Become reasonably familiar with the first solicitor's practice, its organisation and staff
- Hold a set of duplicate keys to the first solicitor's office
- Have access, possibly in a sealed envelope, to all passwords to the first solicitor's computer system, including the password for the principal's level
- Identify and hold contact details for the banks where all client accounts and office accounts are held
- Arrange with the relevant banks to be a signatory on all client accounts and, if necessary, the office accounts also
- Notify their own professional indemnity insurers in

HOW THEY DO IT DOWN UNDER

Attorney arrangements for solicitors' practices are commonplace in many jurisdictions. In some jurisdictions, legislation makes them mandatory for sole practitioners. This applies in New Zealand.

In New Zealand, as in this country, a large percentage of all solicitors' firms are sole practitioner firms. Every sole practitioner is required by law to appoint an attorney and an alternate. When any one of certain specified situations arise, the attorney can step in and operate the practice according to legislation. Typically, the attorney would be asked to get involved in the following circumstances:

- The incapacity of the donor through illness – physical or mental
- The absence of the donor for a planned extended period
- The sudden unexplained departure of the donor
- The solicitor being struck off the roll of solicitors
- The solicitor's practising certificate being suspended
- The death of the solicitor.

Under the relevant New Zealand legislation, the mental incapacity of the donor does not affect the power.

The donee of the power of attorney is often a solicitor in practice geographically close to the donor.

The New Zealand Law Society publishes a list of steps that a donee should take when appointed an attorney. If accepting the nomination, the second solicitor then gathers the information that will be needed should he be called on at a later date to act.

The two parties agree financial arrangements. One option is to provide for an annual retainer. Alternatively, the solicitors will agree that a charge will only arise should the attorney be required to act.

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WHERE THERE'S A WILL, THERE'S A WAY

Clauses to be included in the will of a sole practitioner appointing a 'special executor' to his practice. These clauses should be inserted after the appointment of the general executors:

1. _____
2. I appoint _____, solicitor, of _____, as special executor of this my will in relation to my solicitor's practice currently carried on by me under the name of _____ at _____ (hereinafter called 'my practice trustee') and I declare that this appointment as special executor shall be limited to my practice estate as defined below
3. I give to my practice trustee all the assets and liabilities of my practice estate as defined below on trust to sell my practice as a going concern, if that be possible, upon such terms as my practice trustee shall in his/her absolute discretion think proper, whether by disposal of individual assets by sale or otherwise or the closure of the practice and the collecting in of outstanding fees and the realisation of work in progress and the payment of debts and liabilities of the practice with power to postpone the sale or closure without any liability for loss as if he/she were beneficially entitled to my practice. Until sale or closure, my practice trustee shall continue to carry on the practice either from the practice address or from his/her own offices for the benefit of my estate for so long as he/she considers it beneficial to do so
4. If my practice trustee does not hold a current practising certificate from the Law Society of Ireland at the date of my death, he/she shall appoint another solicitor who does to be my practice trustee in his/her place and that solicitor's name and address shall be deemed to appear in this my will at clause 2 in the place of the said _____as my special executor
5. My practice estate comprises the following:
   - The goodwill, furniture and equipment of the practice
   - All unpaid fees, book debts, undertakings, liens, work in progress, money standing to the credit of the practice at any bank or elsewhere and the benefit of all contracts relating to the practice
   - Any interest in the practice premises
   - Any property of mine used wholly and exclusively in the practice
   - All liabilities and debts in connection with the practice at the date of my death
6. My practice trustee shall hold my practice estate and the annual profits of my practice after payment of all expenses and the net proceeds of any sale, collection of fees or realisation of assets and work in progress as part of my residuary estate and shall pay the same to my trustees
7. My practice trustee shall have power to purchase my practice estate, provided that the purchase price shall not be less than the current market value at the date of the transfer and my practice trustee shall first obtain a valuation and report on the proposed transaction from a professional valuer (such valuation and report to be paid for by my practice trustee) and if the valuer does not advise against the transaction for any reason, my practice trustee may proceed, provided that the purchase price shall not be less than the amount of the valuation
8. My practice trustee shall be entitled to charge and be paid all professional fees or other charges for any business or act done by him, including acts which an executor or trustee could have done personally
9. _____ (and so on).

relation to the arrangement and seek confirmation of cover should they be required to act
- Inquire from the Law Society, with the consent of the first solicitor, or be given information by the first solicitor, about that solicitor's history of regulatory investigations and the outcome of these.

Death of a solicitor

It goes without saying that all proprietors of practices should make a will appointing a solicitor as one of their executors (see **panel**, above). The *Solicitors Acts* provide that a solicitor may be appointed to the practice on the consent of the Law Society, on a temporary basis, pending the issue of a grant of probate or administration. Non-legal family members might not have the experience or expertise to recruit a suitable solicitor without the assistance of a solicitor executor. G

John Costello is chairman of the Law Society's Guidance and Ethics Committee.

HARDTI

The minister for health intends to compensate those at the wrong end of illegal charging in public nursing homes. Byron Wade says that the situation is less clear, however, for residents of private nursing homes

Late last year, it became generally known that the state, through the Health Boards, had been engaged for decades in the illegal charging of nursing-home patients for so-called 'in-patient services'.

Within a short time, the minister for health ordered a stop to illegal charges. More recently, the *Health (Amendment) Act, 2005* and regulations have made such charges legal, insofar as they relate to the future. The minister has announced that she intends to compensate those who were illegally charged.

It seems abundantly clear that patients who were receiving public nursing-home-type care or public subvention will be compensated. But what of people who were resident in private nursing homes?

The old regime

Under part III of the *Health Act, 1970*, free nursing-home care was to be made available to people enjoying either full or 'limited eligibility'. Limited eligibility was dealt with in section 46, which set out a fairly clear means test for persons who would qualify for it. 'Full eligibility' was dealt with in section 45 of that act:

"*1) A person in either of the following categories shall have full eligibility for the services under this part –*
a) adult persons unable without undue hardship to arrange general practitioner medical and surgical services for themselves and their dependants,
b) dependants of the persons referred to in paragraph (a)
2) In deciding whether or not a person comes within the category mentioned in subsection (1)(a), regard shall be had to the means of the spouse (if any) of that person in addition to the person's own means.
3) The minister may, with the consent of the minister for finance, by regulations specify a class or classes of persons who shall be deemed to be within the categories mentioned in subsection (1)."

There appears to be no reported case law on the meaning of 'undue hardship' within the meaning of subsection 45(1). It also seems that no minister for health ever made any regulations under subsection 45(3). In other words, there seems to have been no legal guidance whatsoever on the precise extent of the class of people enjoying 'full eligibility' for free nursing-home care – apart from the extremely vague phrase 'undue hardship'. Indeed, from 1970 until today, the legal conditions for receiving free nursing-home care in Ireland are extremely vague.

Moving the goalposts

Instead, what happened was that the Department of Health and Children drew up internal, extra-legal guidelines and circulars to guide its officials in deciding whether to grant free nursing-home-type care to applicants. These guidelines or circulars had the great advantage (from the Health Boards' point of view) of flexibility.

However, the guidelines and circulars had no legal basis. Indeed, some of the guidelines may have been positively illegal. The department's guidelines were held by a court not to comply with section 45, vindicating the right of adult persons unable – without 'undue hardship' – to arrange for nursing-home care.

It seems that the legality of such departmental guidelines was never tested in open court during the 34 years from 1970 to 2004. Anecdotal evidence suggests that several opportunities arose over those years to test the legality of the various guidelines but, in each case, the dispute was settled out of court.

There is a dearth of material on the meaning of the phrase 'undue hardship' for these purposes. In the leading, or only, Irish authority on the phrase, the Supreme Court seemed distinctly sceptical as to whether it could bear any precise meaning, see *In Re Article 26 and the Employment Equality Bill, 1996* ([1997] 2 IR 321). Indeed, the Family Division of the English Court of Appeal has made it clear that the phrase 'undue hardship' can bear a different meaning for the divorcee of a premiership footballer than for the average citizen; see *Parlour v Parlour* ([2005] Fam 171).

The central point here is that the *Health Acts* expressly designate one method alone to put flesh on the bones of the bare phrase 'undue hardship' – by the

MAIN POINTS

- **No legal guidance on 'full eligibility'**
- **'Undue hardship'**
- **Internal, extra-legal guidelines**

MES

PIC: REX FEATURES

minister making regulations. A draft would have to be laid before, and approved by, each House of the Oireachtas (subsection 45(4)).

For whatever reason, that method has never been used. The only competent authority to determine the meaning of that phrase is the judiciary, which, apparently, has never been asked. If it were, it would be safe to say that there would be practically no way of predicting what the courts would make of that exceedingly vague phrase.

The most prudent approach is to assume, for the meantime, that the ministerial guidelines on eligibility are not generous enough properly to cover cases of 'undue hardship'. This possibility is made more likely, given the financial pressures on the health service, which have been common knowledge for decades.

Clouds of speculation

Among all these clouds of speculation, one thing at least is crystal clear: any Irish person who had attained the age of 70, before or during the period from 1 July 2001 to 14 June, 2005, was unconditionally entitled, on demand, to free nursing-home care. This is due to the effect of the *Health (Miscellaneous Provisions) Act, 2001*, which, in crude terms, awarded medical cards to everyone over the age of 70.

There is a school of thought that believes that being 'fully eligible' under the *Health Acts* for nursing-home care might not be the same as being 'entitled' automatically to such care. In this instance, it is conceivable that the courts might hold that the Health Boards' duty to provide nursing-home care to fully eligible persons is not absolute. Instead, it might vary in proportion to available resources.

It should be admitted that subsection 52(3) of the 1970 act does, at first blush, seem to provide that persons availing of private nursing-home care are not entitled to public nursing-home care or subvention. However, a court is unlikely to apply a literal meaning to that subsection if it would mean allowing the state to profit from its own

MOST LIKELY POSITION

In summary, the position as it appears at present:

- People who received nursing-home-type care in 'public beds' in private nursing homes before 14 June 2005 are entitled to be refunded all money paid by them for such care. It does not matter whether the money was moved by way of payment from the person's own funds or by way of deduction from the person's pension
- People who received nursing-home-type care in private nursing homes before 14 June 2005 are entitled to be refunded some or all money paid by them to the health boards for such care, if one of the two following sets of conditions are met:

  Either:

  i) The person asked his or her local health board for public nursing-home-type care, or a public subvention of private nursing-home-type care (or there is a reasonable explanation as to why such request was not made), and

  ii) The health board refused to provide either the care itself or a subvention, and

  iii) The private nursing-home-type care that was arranged for the person was only arranged by occasioning 'undue hardship' to that person. What constitutes 'undue hardship' remains to be decided by the courts.

  Or:

  i) The person had attained the age of 70 years before or during the period from 1 July 2001 to 14 June 2005, and

  ii) At any time during the stated period, the person asked his or her local health board for public nursing-home-type care or a public subvention of private nursing-home-type care (or there is a reasonable explanation as to why such request was not made), and

  iii) The health board refused to provide either the care itself or a subvention.

wrongdoing. For example, if a person had been wrongly denied public nursing-home care or subvention, and had thus been compelled, despite undue hardship, to choose a private nursing home, then that very fact should not be a basis for denying him compensation now: *nullas commodum capere potest de injuria sua propria* (no-one shall benefit by his own wrong).

If and when such a case were to come before the courts, the minister might decide to fall back on the argument that its internal guidelines for awarding free nursing-home care had been in place for a long time. This would then mean that she could take advantage of some form of estoppel or legitimate expectation. However, such an argument would not be strong. It would require a new departure in the law for a court to stretch either of those concepts to protect a minister from the consequences of her breach of statutory duty.

Of course, if at the relevant time, a person was eligible for public nursing-home care or subvention, and never asked his or her local health board for it, then it is very difficult to see how such a person would be able to recoup payment. This is because some particular breach of statutory duty or other tort would have to be identified.

If the health board was never given the chance to consider whether to grant public nursing-home care or subvention, it would also seem contrary to natural justice to penalise it for that. For every person considering a claim for repayment of private nursing-home charges, it would probably be important to prove that this person did request the relevant health board for public nursing-home-type care or subvention.

"There seems to have been no legal guidance whatsoever on the precise extent of the class of people enjoying 'full eligibility' for free nursing-home care"

Steps to take

What is a solicitor to do if he or she has a client who was refused public nursing-home care or subvention, and who has spent a lot of time in a private nursing home?

Proceedings ought to be issued without delay against the minister for health and the Health Service Executive – the reason being that the minister has indicated her intention to effectively plead or use the *Statute of limitations* in order to limit the period of time for which compensation will be paid. The minister or her agents have mentioned the period of six years prior to 9 December 2004 as the maximum period for which compensation can be obtained.

It would seem that for every week's delay in suing, the client could effectively lose a week's nursing-home fees. Of course, this should not be taken to suggest that private nursing-home residents would be able to recover all costs paid for upmarket care.

The Department of Health and Children is currently considering what kind of legislation it will draft to deal with compensation for illegal nursing-home charges. In relation to this scheme, the department has issued a special application form for those who feel they may have a right to compensation.

However, it is by no means clear whether the posting of this application form will be treated as 'stopping the clock' for the purposes of the *Statute of limitations*. Presumably all will be made clear when the long-awaited legislation is passed towards the end of this year, as is expected.

The most prudent step to take in such cases is to cause proceedings to be issued (but not necessarily *served* immediately). This applies equally to persons who have posted the completed application forms and to those who have never received one.

Test cases

It is expected that the superior courts are likely to hear certain test cases on this matter in the coming months. Given the lack of reported case law on the subject, it seems impossible to predict the outcome of such cases.

There is a significant chance that at least some residents of private nursing homes (or their estates) will merit compensation by the Department of Health, as will public patients.

Prudent practitioners ought to take note and issue precautionary writs in anticipation of a favourable judgment. G

Byron Wade is a Cork-based barrister.

NEW EDITION

Worth shouting about...

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Tottel publishing

Book review

Constitutional equality law

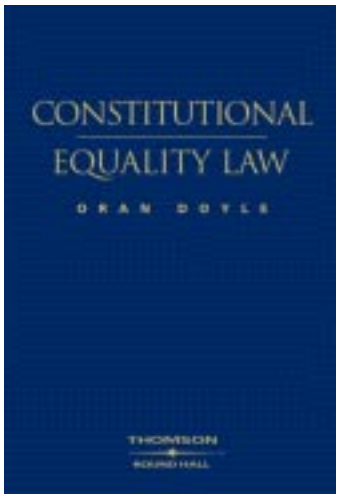
Oran Doyle. Thompson Round Hall (2004), 43 Fitzwilliam Place, Dublin 2.
ISBN: 1-85800-395-4 (hardback). Price: €165.

Equality or even-handedness in government action is important because it directly or indirectly enhances the concept of freedom. This concept is implicit in the celebrated clause of the US *Declaration of independence* (1776): "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." We should not underestimate the potential of a wide judicial interpretation of the concept of constitutional equality.

Dr Oran Doyle considers several different conceptions of equality: his argument is that the courts have essentially conceived of equality as a guarantee of rational process. He argues that a more substantive conception of constitutional equality would, for egalitarian reasons, be preferable.

The author argues correctly that the position of equality in the current Irish political and legal debate is not straightforward. In robust language, he argues that "equality is the most subversive and currently the most contentious of political ideals".

Article 40.1 of the constitution states: "All citizens shall, as human persons, be held equal before the law." However, there is a significant qualification in the second sentence of that article: "This shall not be held to mean, however, that the state shall not in its enactments have due regard to differences of capacity, physical, moral and social function." The courts, in the past, have interpreted the guarantee of equality expressed in article 40.1 in a restrictive sense, with an undue emphasis on the phrase 'as human persons'. The author states,



however, that some *dicta* of the Supreme Court in recent cases suggest that the restrictive interpretation may be revisited. This would be welcomed.

In part 1 of the book, the meaning of equality and the legal limits on judicial power are addressed. The constitutional equality doctrine is described in part 2, with an analysis of the case law interpreting article 40.1. In this part, a fascinating chapter entitled 'Sex and sexuality' is particularly insightful, with the conclusion that the approach of the Irish courts to sexual equality may appear to be a curious mixture of conservative and liberal-progressive judgments but that many anomalies can be explained by considerations in the minds of the drafters of the constitution. Alternative conceptions of equality are considered in part 3 of the book.

Legal, philosophical and historical scholarship are deployed in exemplary fashion in this critique of constitutional equality law. This is an insightful and valuable contribution to an important aspect of our law. G

Dr Eamonn Hall is the chief solicitor of Eircom Group plc.

Tech trends

‘Open Doro’ to free phone calls

Okay, so eBay paid a king’s ransom for the internet voice company Skype (up to $4.1 billion, it’s said). What is Skype and what can it do for you and your cost-draining business? Here’s Skype’s own blurb: “You could think of us as the big, free internet telephony company. We prefer to think of ourselves as a big group hug, even a present. Yes… that’s it… we’re a present… but without the ribbon.” (Don’t call in the people with white coats just yet. It’s mad, yes, but it’s ‘free’.)

In order to chat away to your friends and family on your computer, you would normally need a microphone, speakers and phone link. Well, the Doro Phone simply plugs into your USB and comes with all the software you need. The ‘free’ bit is that you can call other Skype users for free – no matter where they are in the world. (They just need to have Skype software installed on their computers.)

In addition, your phone allows you to call any other phone on the planet through your computer at much better rates than through your landline. You can also buy a ‘Skype-In’ line so that you can be called wherever you, your laptop and your Doro Phone happen to be. Put an end to those horrific phone bills and get a Doro plugged into your PC or Mac asap!

Skype-friendly phones are available from Flor Griffin, Cork, tel: 021 435 5000. Check Skype out at www.skype.com.

V@MP it up

The V@MP 400 is touted as “simply the best MP3 player for under Stg£60 available” (That’s about €88). Never believe the blurb until you try it yourself, however. We haven’t seen this little beauty in the flesh, as it only comes out at night, but a picture speaks a thousand words. (You’ll see for yourself that it comes with speakers.)

This dark little darling has 128MB of on-board memory, and takes SD and MM cards (sounds vaguely masochistic), so it’s “as big as you want it to be” (we didn’t write that, honest – it’s in the blurb).

The V@MP has a digital voice recorder and FM radio, dual headphone sockets (so you could share it with the Duke’s younger brother, if he weren’t in a shallow grave) and a very neat fold-away USB port.

Amazingly, it’s powered, not by moonlight, but by a single AAA battery, which gives a brain-jolting 12 hours of play (no need to wait for the lightning to strike the copper conductor then). It even has its own little on-board speaker and comes with stereo travel speakers and dock.

Possess the V@MP 400 for Stg£59.99 (€88.30), available from iwantoneofthose.com.

Pearls of wisdom

Olympus Pro Line digital voice recorders are “designed to meet professional dictation requirements and let you streamline your workflow”. Should PA’s be running scared?

The range features the DS4000 and DS3300 digital recorders. These boast 32MB XD card, USB cable, slide control and DSS PRO dictation software. (We have hardly any idea what this means – ask your PA.)

A ‘look cool’ conference kit version is available, complete with two AKG microphones and carrycase. This is for the lawyer who wants to play ‘pretend journalist’ or simply to look important when interviewing clients.

The AS4000 PRO Transcription Kit includes DSS V4 software, headset and footpedal – this is the model most favoured by PAs for obvious reasons, so don’t disappoint them.

The Olympus digital professional range is available from Business Electronic Equipment Ltd, tel: 01 450 9044, fax: 01 450 9744 or sales@bee.ie.

Techno wonder-balls keep your partner guessing

For those of you who think of golf as 'a good walk ruined', why not liven things up with the remote-controlled 'RC Golf Incred-a-Ball' – or, then again, a badger. (No prizes for guessing which one your head greenkeeper would prefer.)

Balls or badgers, just as your partner reaches their backswing apogee (or whatever it's called), set your opponent's ball trundling off the tee! Exquisitely harmless fun.

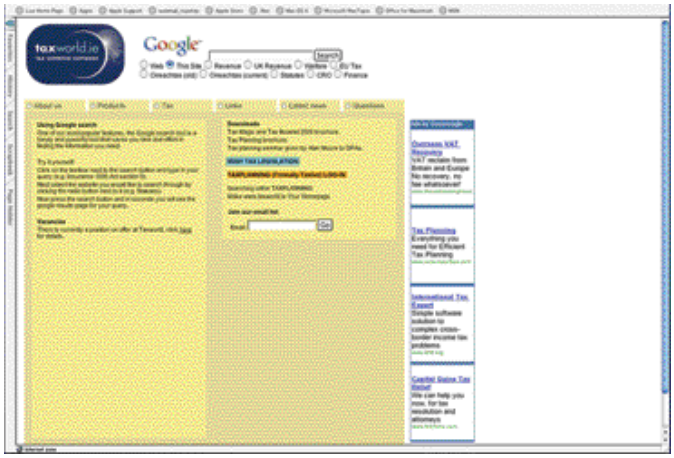
This little techno wonder-ball has a spinning gyro inside. When you activate it from the remote, it spins off in random directions.

Amaze your friends. Keep your fingers amused. The RC Golf Incred-a-Ball is available at Stg£14.99 (€22.06) from iwantoneofthose.com.

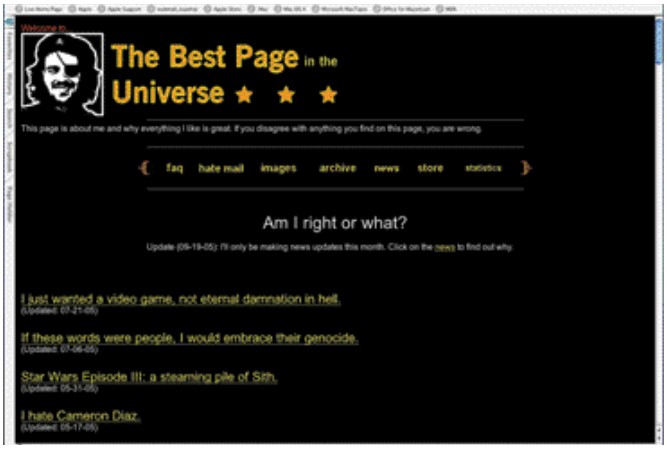
Sites to see

What's Wordsworth? (*www.askoxford.com*). You're writing a report and suddenly realise that a word looks strange on-screen. Maybe it's spelt wrong, but where's the dictionary? Well, now you can literally ask Oxford, as the complete *Compact Oxford English Dictionary* is on-line. Couple that with an on-line style/usage guide, and prospective contributors to the *Gazette* can make the editor's life a whole lot easier.

The beer of kings (*www.grolsch.com*). While Budweiser may claim to be the king of beers, there is no doubt that Grolsch is the beer of kings (and we're not getting a kickback to say that, though we're open to, ahem, 'beer sponsorship'). The Grolsch site offers a handy guide to bars in Amsterdam, as well as Grolsch-themed classic arcade-style games and a virtual tour of the brewing process. Now, where's that free crate of swingtops?



Handy dandy, sugar plum candy (*www.taxworld.ie*). It's nice when everything's in one place, isn't it? Well, that's the case with this site, at least as far as tax info goes. The nice people at Taxworld have consolidated all current Irish tax law in one place (so no more trawling through different years on the Irish statute book on-line). As well as this, they have a Google-powered search engine specifically designed to focus on tax issues in both Ireland and beyond.



He's number one (*http://maddox.xmission.com*). This is, apparently, the best page in the universe. So, no egos involved here, then. It is, however, not for the faint hearted. It's a collection of the rants and ramblings of what our American cousins might call a 'blow-hard'. That said, if you turn your 'sensitive' knob down, it can be moderately entertaining. But topics as diverse as 'I hate Cameron Diaz' and 'the 11 worst songs of 2004' can only go so far.

Committee reports

CRIMINAL LAW

Attorney general's scheme – revision of parameters

Members may wish to note that the Department of Justice has advised the society that it intends introducing revised parameters for the operation of the above scheme. A revised claim form will also be introduced.

The scheme applies to *habeas corpus* applications, High Court bail motions, judicial review proceedings and applications under the *Extradition Act, 1965* and the *European Arrest Warrant Act, 2003*.

The society's Criminal Law Committee is currently in correspondence with the department and the AG's office regarding these developments. The committee will notify the changes to practitioners as soon as the revised scheme is finalised.

Criminal Legal Aid Scheme: retention of name on Criminal Legal Aid Panel for the panel year commencing 1 December 2005

A practitioner who wishes to have his/her name retained on the legal aid panel(s) beyond 30 November 2005 must submit to the relevant county registrar(s) a tax clearance certificate with an expiry date after 30 November 2005.

A solicitor whose tax clearance certificate has an expiry date **on or before 30 November 2005**, and who wishes to have his/her name retained on the Criminal Legal Aid Panel(s) for the panel year beginning on 1 December 2005, must apply to the Revenue Commissioners for a new tax clearance certificate. Written applications will be dealt with in the solicitor's local Revenue district. Application can also be made on-line at *www.revenue.ie/services/taxclearance.htm*.

On receipt of the certificate, it should be forwarded to the relevant county registrar(s).

Criminal Law Committee

Practice notes

REVENUE *TAX BRIEFING* PUBLICATION

Tax Briefing is a free publication that contains information and articles on all areas of tax. It is available in hard copy and as an electronic magazine on the practitioners' page of the Revenue website, *www.revenue.ie*. A feature of the magazine is that it includes, at the end of each article, an e-mail address for queries/clarifications relating to the article in question.

The August 2005 issue contains articles on VAT and property and tax treatment of legal fees, which will be of particular interest to solicitors.

Probate, Administration and Taxation Committee

CHANGE IN PROCEDURE LEADING TO THE APPOINTMENT OF NOTARIES PUBLIC

Up to now, there has been an obligation on an applicant to show to the satisfaction of the chief justice that the appointment was needed to meet the exigencies or demands of business and commerce in the place for which the appointment was sought. This need was established by reference to a number of criteria, including population growth, new industries and so on, and the numbers and availability of notaries in the area, and was quite separate from the questions of the applicant's fitness to perform the duties of a notary public, the availability of a public office, and so on.

The chief justice has now made an order that the requirement for an applicant to show 'need' no longer applies. This does not in any way affect the requirement for an applicant to satisfy the faculty, for the purposes of order 127 of the *Rules of the superior courts*, that he/she has a sufficient knowledge of notarial matters and procedures and of the particular legal provisions applicable to notarial matters in order to be a competent and efficient person to carry out the duties of a notary public if so appointed.

Brendan Walsh, registrar, Faculty of Notaries Public in Ireland.

LEGISLATION UPDATE: 16 AUGUST – 9 SEPTEMBER 2005

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – *www.lawsociety.ie* (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act.

SELECTED STATUTORY INSTRUMENTS

Companies (fees) (no 3) order 2005
Number: SI 517/2005
Contents note: Provides for the introduction from 1/12/2005 of a new table of fees to be paid to the registrar of companies. The table makes separate provision for fees payable in respect of paper transactions and electronic transactions
Commencement date: 17/8/2005 for article 3 (revocation of the *Companies (fees) (no 2) order 2005* [SI 365/2005]), 1/12/2005 for articles 4 and 5 (per article 2 of the order)

Dormant Accounts (Amendment) Act, 2005 *(commencement) order 2005*
Number: SI 545/2005
Contents note: Appoints 1/9/2005 as the commencement day for all provisions of the act

Education for Persons with Special Educational Needs Act, 2004 *(commencement) order 2005*
Number: SI 507/2005
Contents note: Appoints 14/7/2005 as the commencement date for sections 1, 2, 14(1)(a), 14(1)(c), 14(2), 14(3), 14(4), 19 to 37, 40 to 44 and 50 to 53 of the *Education for Persons with Special Educational Needs Act, 2004*

Education for Persons with Special Educational Needs Act, 2004 *(establishment day) (section 19) order 2005*
Number: SI 508/2005
Contents note: Appoints 1/10/2005 as the establishment day for the National Council for Special Education under section 19 of the *Education for Persons with Special Educational Needs Act, 2004*

Circuit Court rules (funds in court) 2005
Number: SI 525/2005
Contents note: Amend the *Circuit Court rules 2001* (SI 510/2001) by amending order 15, rules 13 and 20, and by the insertion of a new order 64A to make provision for the accountant to receive and handle transactions in respect of funds lodged, or to be lodged, in the Circuit Court in respect of categories of proceedings, or of awards or lodgments made in proceedings that are prescribed by the president of the Circuit Court
Commencement date: 20/9/2005

Circuit Court rules (personal injuries) 2005
Number: SI 526/2005
Contents note: Insert a new order 5A ('Procedure by personal injuries summons') and relevant forms in the *Circuit Court rules 2001* (SI 510/2001) and amend orders 11 and 67 of the rules
Commencement date: 20/9/2005

Circuit Court rules (section 40, Civil Liability and Courts Act, 2004) 2005
Number: SI 527/2005
Contents note: Insert a new rule 6 in order 59 of the *Circuit Court rules 2001* (SI 510/2001) to provide for the admission to proceedings of recorders and accompanying persons for the purposes of section 40 of the *Civil Liability and Courts Act, 2004*
Commencement date: 20/9/2005

European Communities (protection of employees) (part-time workers) regulations 2005
Number: SI 528/2005
Contents note: Remove the provision in paragraph 10(c) of part II of the schedule to the *Labour Services Act, 1987* that an employee must work not less than 18 hours a week for FÁS before being entitled to vote in worker director elections. Also remove the provision in paragraph 11 of part II of the schedule that an employee must work not less than 18 hours a week for FÁS to be eligible to be nominated as a candidate at the elections
Commencement date: 18/8/2005

Rules of the superior courts *(jurisdiction, recognition, enforcement and service of proceedings) 2005*
Number: SI 506/2005
Contents note: Amend the *Rules of the superior courts 1986* (SI 15/1986) to prescribe procedures in respect of the following:

- The 1968 *Brussels convention* on jurisdiction and enforcement of judgments in civil and commercial matters and protocol, including the 1978, 1982, 1989 and 1996 accession conventions
- *Lugano convention* on jurisdiction and enforcement of judgments in civil and commercial matters and protocol
- Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended by regulation 1496/2002 and the 2003 act of accession of new states
- Regulation 2001/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing regulation 1347/2000
- Regulation 1348/2000 on the service within the member states (with the exception of Denmark) of judicial and extra-judicial documents in civil or commercial matters and any amendments thereto
- Provisions amended include: order 4, rule 1A; order 5, rule 14; order 11A; renumbering of order 11B to order 11E and insertion of new orders 11B, 11C and 11D; order 12, rules 2(3) and 2(4); order 13A; order 19, rule 3A; order 29, rules 8 and 9; order 42A; order 121, rule 2A; renumbering of order 121A to 121B and insertion of new order 121A; order 133 and the schedules

Commencement date: 10/8/2005

Rules of the superior courts *(proof of liquidator's appointment in creditors' voluntary winding up) 2004*
Number: SI 502/2005
Contents note: Insert a new rule 144 in order 74 of the *Rules of the superior courts 1986* (SI 15/1986) to provide for the certification of a liquidator in a creditors' voluntary winding up
Commencement date: 1/4/2004

Safety, Health and Welfare at Work Act, 2005 *(appeal forms) rules 2005*
Number: SI 548/2005
Contents note: Prescribe the forms of notice to be used by a person appealing to the District Court against an improvement notice, a prohibition notice or an information notice served on such person under the relevant provisions of the act. Also prescribe the form of notice to be used by a person appealing to the District Court to have the operation of a prohibition notice suspended
Commencement date: 1/9/2005

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ORDER OF THE HIGH COURT, 18 JULY 2005

The High Court 2005, no 46 SA
In the matter of Patrick A Burke (otherwise Tony Burke), practising as Tony Burke Solicitors, Churchview, Ballinlough, Cork, and in the matter of the *Solicitors Acts, 1954-2002*
Law Society of Ireland (applicant)
Patrick A Burke (respondent solicitor)

On 18 July 2005, the president of the High Court made an order pursuant to section 10A(1) of the *Solicitors (Amendment) Act, 1994*, as amended by insertion by section 13 of the *Solicitors (Amendment) Act, 2002*, that the respondent solicitor do on or before Friday 22 July 2005 deliver to the Law Society of Ireland the file of a (named) complainant, the subject matter of a complaint to the society dated 22 September 2004.

Costs were awarded to the society, to be taxed in default of agreement.

John Elliot, registrar of solicitors and director of regulation

SOLICITORS DISCIPLINARY TRIBUNAL

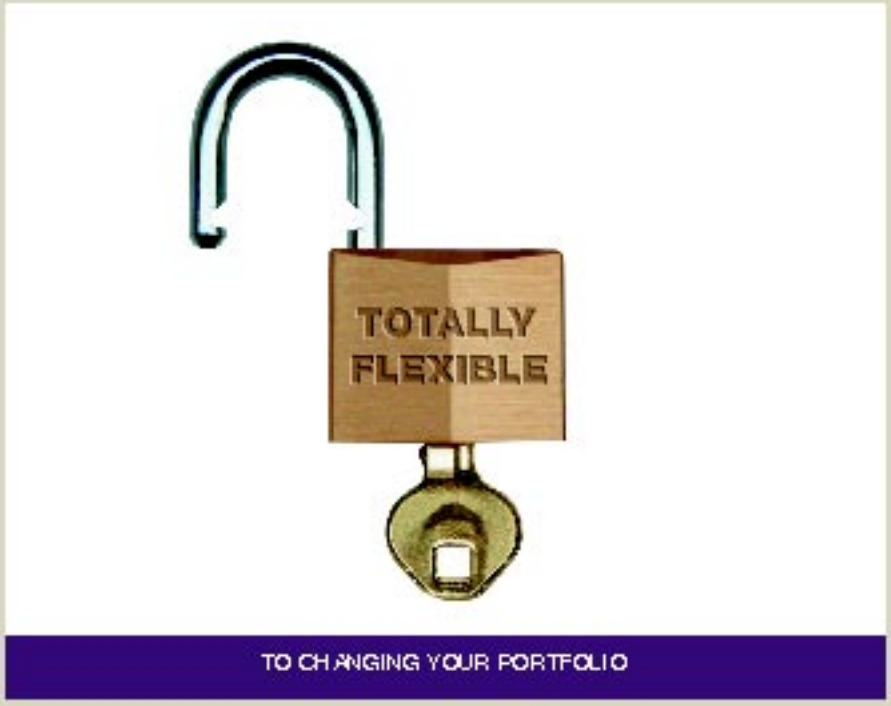
This report of the outcome of a Solicitors Disciplinary Tribunal inquiry is published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act, 2002*) of the *Solicitors (Amendment) Act, 1994*

The High Court
In the matter of Brian FG Toolan, a solicitor who practised as Toolan & Associates at Arva, Co Cavan, and in the matter of the *Solicitors Acts, 1954-2002* [2005 /48SA]
Law Society of Ireland (applicant)
Brian FG Toolan (respondent solicitor)

On 3 May 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Allowed the existence of a deficit of client funds as of 28 February 2003 of at least €126,317.43
b) Failed to write up the client ledgers since 31 August 2001, in breach of the *Solicitors' accounts regulations*
c) Drew amounts from the client account to the office account in the period 1 July 2001 to 28 February 2003, which were not debited to specific clients in the clients ledger, amounting to €161,231.43
d) Drew two amounts on the client account in February 2003, which were used to purchase two bank drafts, the proceeds of which, according to the Ulster Bank, were lodged to the solicitor's credit card account, totalling €21,050
e) Allowed debit balances on the client ledger account in the solicitor's own name, totalling €6,327.65
f) Allowed other debit balances to occur in the client ledger account, totalling €5,839.51
g) In 2001, sold a site and part of the proceeds, in the sum of €14,723.30, were lodged to the client account and credited to the ledger account in the solicitor's own name. Over a period of months, the solicitor then withdrew €14,723.20 and continued to make withdrawals from the client account, which were referenced to the sale of the site, resulting in the debit balance occurring of €6,327.65
h) Abandoned his practice without making necessary arrangements for the protection of his clients or the proper carrying on of his practice in February 2003.

The matter came before the president of the High Court on 25 July 2005 and the president ordered on that date that the respondent solicitor may not be permitted to practise as a sole practitioner or as a partner in a solicitor's practice, but that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, and that the respondent solicitor pay the costs of the Law Society of Ireland in relation to the hearing before the disciplinary tribunal and the costs of the hearing before the High Court, such costs to be taxed in default of agreement. G



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DISCIPLINARY TRIBUNAL ANNUAL REPORT

Year ending 31 December 2004

The Solicitors Disciplinary Tribunal is a statutory body constituted under the *Solicitors (Amendment) Act, 1960*, as substituted by the *Solicitors (Amendment) Act, 1994* and amended by the *Solicitors (Amendment) Act, 2002*. The tribunal is wholly independent of the Law Society.

The tribunal is composed of 20 solicitor members and ten lay members, the latter drawn from a wide variety of backgrounds to represent the interests of the general public. All tribunal members are appointed by the president of the High Court – solicitor members from among practising solicitors of not less than ten years' standing and lay members who are not solicitors or barristers.

Careful consideration is given to all applications and the tribunal, as a matter of ordinary procedural fairness, strives to ensure that everyone has a fair and public hearing within a reasonable time by an independent and impartial tribunal. A party to proceedings is given a reasonable opportunity of presenting his/her case, which will include the opportunity to call evidence, cross-examine witnesses and to seek the disclosure of relevant documents.

Compared with 2001, when the tribunal sat on 27 occasions, there has been over a 100% increase in sittings in 2004.

Observations

The gravity of matters considered by the tribunal is demonstrated by the fact that the tribunal recommended to the president of the High Court that the names of three solicitors be struck off the Roll of Solicitors, and further recommended in the case of three solicitors that their practising certificates be restricted.

Many of the failures arose as a result of non-compliance with the *Solicitors' accounts regulations*, which resulted in the names of two solicitors being struck off the roll. The importance of maintaining proper books of account and filing an accountant's report for the end of a solicitor's financial year cannot be overstated. If this is not done, the consequences can be onerous, especially where the solicitor is a sole practitioner.

Delays and the failure to keep clients adequately informed of their business continue to be a frequent and well-justified cause of complaint. These failures are often compounded by the failure of a solicitor to reply to correspondence from the Law Society and/or to attend meetings of the Registrar's Committee when requested to do so.

Solicitors' conduct should inspire confidence in the legal profession. However, it is obvious from the findings of the various divisions of the tribunal that

APPLICATIONS

Of the 117 cases before the tribunal in 2004, there were 42 (38%) findings of misconduct.

APPLICATIONS OUTSTANDING FROM PREVIOUS YEARS:	66	NEW APPLICATIONS, YEAR ENDING 31 DECEMBER 2004:	51
Law Society	47	Law Society	24
Others	19	Other	27
Prima facie case rejected	9	*Prima facie* case rejected	8
Awaiting *prima facie* decision	–	Awaiting *prima facie* decision	23
Prima facie application withdrawn	1	*Prima facie* application withdrawn	–
Prima facie decision adjourned	5	*Prima facie* decision adjourned	–
Prima facie cases found	20	*Prima facie* cases found	20
Hearings		**Hearings**	
Misconduct found	34	Misconduct found	8
Misconduct not found	3	Misconduct not found	1
Part heard	8	Part heard	4
Struck out	3	Struck out	–
Withdrawn	1	Withdrawn	2
Dismissed	1	Dismissed	–
Awaiting inquiry	1	Awaiting inquiry	5

Orders made by the tribunal pursuant to section 7(9) of the *Solicitors Amendment Act, 1960* (as amended)	Number of orders
Censure, fine, restitution and costs	3
Censure, advise, admonish, fine and costs	1
Censure, fine and costs	20 *
Admonish, fine and costs	4
Admonish and advise	2
Advise, fine and costs	5
Advise and costs	1
Referrals to the president of the High Court	7 *

**One case related to two co-respondent solicitors and a separate order was made in respect of each solicitor*

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NUMBER OF PARTNERS: _____ NUMBER OF ADDITIONAL SOLICITORS: _____

YOUR FEES FOR:	EST. 2005-2006	2004-2005	2003-2004
IRELAND & UK:	€	€	€
NORTH AMERICA:	€	€	€
OTHER:	€	€	€
FEES GRAND TOTAL:	€	€	€

ACTIVITIES AS A PERCENTAGE OF TOTAL FEES

ACTIVITY	%	ACTIVITY	%
Personal Injury Litigation:		Personal Injury Defense:	
Residential Conveyancing:		Trust & Probate:	
Commercial Conveyancing:		Commercial non-securities-related:	
Commercial – securities-related:		Landlord & Tenant	
Financial Advice & Services:		Employment Work (non-litigious):	
Litigation other:		Non-Litigation other:	
Matrimonial:		Arbitration, Adjudication, Mediation:	
Criminal Law:		Welfare & Immigration:	
Debt Collection:		Administering Oaths:	
Minors:		Internet based online services:	
Other activities - describe:			
NOTES ON ACTIVITIES:			

COVERAGE YOU REQUIRE:	PRIMARY POLICY:	TOP-UP POLICY:
LIMIT OF INDEMNITY:	€	€
CLAIMS EXCESS: (per claim)	€	€

CLAIMS &/or CLAIMS CIRCUMSTANCES - 5 YEARS HISTORY: Have any claims been made or previously settled or are you aware of any circumstances, after enquiry of all partners, consultants, locums, employees and predecessors in business, which may give rise to a claim against your firm/Practice or against any partner, consultant, locum, employee or any predecessors in business, for any civil liability to the extent that it arises from Practice as a Solicitor? (If so, you should ensure that you have notified the Solicitors' Mutual Defence Fund Ltd or your existing insurers – as applicable) **PLEASE STATE "*YES*", "*NO*" or "*NONE*", HERE:** _____ If Yes, please provide details and if necessary use a separate signed and dated page – on your own letterhead.

N.B.: Please tick this box: ☐ if an additional signed & dated 5 yr claims history page is attached (don't forget to sign and date this sheet)

SIGNED: _____ DATED: _____ 2005.
FOR AND ON BEHALF OF THE PRACTICE

COMPLETE FULLY FOR QUOTE INDICATION – INSURERS WILL REQUIRE FURTHER DETAIL TO FINALISE MATTERS.

PRINCIPAL GROUNDS ON WHICH PROFESSIONAL MISCONDUCT WAS FOUND

Civil actions

- Failing to protect a client's interest in a timely manner or at all
- Failing to take steps to process a client's claim in a timely manner or at all
- Forging and uttering a document purporting to be an order of the District Court, contrary to sections 3 and 6 of the *Forgery Act 1913*
- Forging a partner's name on a cheque advanced to a client.

Communication with clients/ colleagues

- Failing to communicate with a client in a timely manner or at all
- Failing to reply to correspondence from a former client's new solicitor
- Failing to reply to telephone calls from a client enquiring about the situation.

Conveyancing

- Seriously prejudicing a client in failing to co-operate with the efforts of the client's new solicitor to register the former client's title to the property
- Failing to register a client as owner of property and failing to disclose to the client the loss of title documents to a property
- Involved in obtaining cash in £20 notes and was present when monies were paid under the counter as part of the purchase price of a property, thereby defrauding the Revenue
- Making a false declaration of the total consideration in relation to a conveyancing transaction in a 'particulars delivered' document required by the Revenue Commissioners for the purposes of ascertaining stamp duty liability, thereby defrauding the Revenue of the correct amount of stamp duty payable.

Solicitors' accounts regulations

- Allowing a deficit to arise when monies were drawn from a deposit received on behalf of a client in circumstances where the deposit should have been left intact pending execution of the contract
- Misappropriating sums from the client account wrongfully, debiting these withdrawals to another client ledger account and using the monies to pay outstanding taxes due to the Revenue Commissioners
- Creating debit balances on the client account and, in so doing, utilising other client monies to pay penalties incurred for late payment of stamp duty
- Transferring monies to an unrelated client ledger account
- Permitting a cheque to be drawn on the client account, which was debited to the client account ledger of another client, which monies were used in the purchase of a business by the solicitor's son, which caused a debit balance to arise
- Falsifying the books of account to conceal misappropriation of client monies
- Lodging sale proceeds, being client monies, to the office account, in breach of regulations 4(1) and 6(4)(a) of the *Solicitors' accounts regulations 2001*
- Breaching regulation 8(1) of the *Solicitors' accounts regulations no 2 of 1984* by failing to withdraw monies from the client account either by a cheque drawn on the client account in favour of him or by the transfer from the client account to an account in the name of the respondent solicitor, not being a client account.

Section 68

- Failing to provide a client with particulars in writing of the actual charges, contrary to section 68(1)(a) of the *Solicitors (Amendment) Act, 1994*
- Failing to provide a client with any information on the basis on which the charges would be made, contrary to section 68 (1)(c) of the *Solicitors (Amendment) Act, 1994*
- Failing to inform the client in writing of the client's right to require a solicitor to submit a bill of costs to a taxing master of the High Court for taxation on a solicitor-and-own-client basis, contrary to section 68(8)(b)(i) of the *Solicitors (Amendment) Act, 1994*
- Breaching section 68(2) of the *Solicitors (Amendment) Act, 1994* by charging a percentage fee to a client in relation to a case.

Undertakings

- Failing to comply with an undertaking to forward an original deed of assignment, duly stamped and registered, in a timely manner or at all
- Failing to comply with an undertaking given to a complainant's solicitor in a timely manner, and in particular the following matters:
  a) The furnishing of a certified copy of the head lease
  b) The furnishing of a landlord's consent to an assignment, and
  c) The furnishing of a deed of assignment duly signed and witnessed.

Regulatory body – Law Society of Ireland

- Failing to respond to the society's correspondence in a timely manner or at all
- Failing to attend or to arrange representation at meetings of the Registrar's Committee for the purposes of investigating a complaint against a solicitor when requested to do so
- Breaching an order of the president of the High Court for delivery of all the documents referred to in the society's section 10 notice by failing to furnish to the society a ledger card or cards relating to a file
- Misleading the Registrar's Committee in a letter when it was represented that the solicitor had forwarded a client's title deeds to a building society when they had not.

a small number of solicitors do not understand the importance of being honest and reliable in their dealings with their clients or the Law Society. Consequently, they appear before the tribunal and for some, whether they are represented or not, this is a very harrowing experience.

The tribunal recognises that their work has quite a human aspect to it and that the experience may be an uncomfortable one for the solicitor concerned. Nevertheless, the onus is on the tribunal to ensure that the confidence of the public, clients and the solicitors' profession is maintained in the system by being unbiased, thorough and fair to all concerned. G

Francis D Daly, chairman. These are edited extracts from the report. The full version is available from the Solicitors Disciplinary Tribunal, Bow St, Dublin 7.

Legislation focus

Safety, Health and Welfare at Work Act, 2005

This article looks at the general obligations of employers and employees under the *Safety, Health and Welfare at Work Act, 2005* (the 2005 act). Follow-up articles will deal with parts 3, 4, 6 and 7 of the act, which range from protective and preventative measures to penalties under the act.

The 2005 act became law on 1 September last[1]. While the 2005 act is an overhaul of the previous legislation, much of the new legislation is very similar to the previous legislation. The draftsmen have tightened up the legislation and, in doing so, have introduced some new provisions which, inevitably, impose stricter obligations on those affected by the act.

In order to see what is new, it is helpful to briefly review the old legislation.

The *Safety, Health and Welfare at Work Act, 1989* (the 1989 act) was brought in by the then minister for labour, Bertie Ahern, on 1 November 1989.

The 1989 act introduced:

1) The concept of and an obligation on employees to prepare 'safety statements'
2) A general obligation on employers to ensure, so far as reasonably practicable, the safety, health and welfare at work of all employees[2]
3) An obligation on employers to consult to a limited extent with employees[3]
4) A general entitlement of employees to make representations and appoint a 'safety representative' from amongst their number[4], and
5) A general statutory obligation on employees to, *inter alia*, take reasonable care of their own and others' safety, health and welfare.

The most significant amendment made to the 1989 act was in 1993, when the minister for enterprise, trade and employment, Ruairi Quinn, made the Safety, Health and Welfare at Work *(general application) regulations*[5] (the 1993 regulations). The 1993 regulations were brought in to implement seven EU Council directives[6] and to expand on the obligations that already existed under the 1989 act.

1993 regulations

The 1993 regulations introduced:

1) Risk assessment[7] – in preparing a safety statement, an assessment had to be made in writing
2) Training[8] – to employees on health and safety
3) Health surveillance[9] – a periodic review for the purpose of protecting health and preventing occupationally related disease and assisting early detection
4) Personal protective equipment[10] – an obligation to supply, maintain and train in the use of protective equipment in appropriate circumstances
5) Visual display screens[11] (VDUs) – an obligation to analyse the workstations, including the ergonomics of the equipment used, provide eye tests at regular intervals and supply corrective appliances (such as glasses)
6) Electricity[12] – an obligation to protect persons from danger;
7) First aid[13] – an obligation to provide first-aid equipment and first-aiders, and
8) Notification of accidents[14] – an obligation to report accidents to the Health and Safety Authority (HSA) where someone is killed, or hospitalised for more than three days, as a result of an incident at work.

General workplace and industry specific requirements were set out in the schedules.

Safety, Health and Welfare at Work Act, 2005

The commencement order brought into force all the provisions of the 2005 act, except the provision that repeals the 1993 regulations. The 1993 regulations are effectively still in place[15] until the department has drawn up new regulations.

The 1989 act and preceding health and safety legislation, such as the *Mines and Quarries Act, 1965*, have been repealed[16].

Definitions

The definition of 'employee' is extended to include fixed-term and temporary employees. It is unclear why the draftsmen of the legislation felt it necessary to specifically include fixed-term and temporary employees when, by using the standard definition used in most comparable employment legislation, such employees would have been automatically included anyway. A trainee or someone on work experience is also deemed to be an employee.

The definition of 'employer' is also expanded. For example, if an individual (A), who is engaged by an employment agency[17] to perform personally any work or service for another (C) then, in such circumstances, C is deemed to be A's employer for the purposes of the 2005 act, even though there is no contract between A and C, and even if the employment agency pays A's wages or salary.

A self-employed person is treated as an employer for the purposes of the 2005 act.

(An asterisk beside the heading denotes an offence under the 2005 act. Offences will be dealt within the next article.)

*General duty of employer

Section 8 states:

"Every employer shall ensure, so far as reasonably practicable, the safety, health and welfare at work of his or her employees."

Although this wording is very similar to wording in the 1989 act, the significant difference is that the phrase "reasonably practicable" has been defined[18] for the first time as exercising all due care by:

1) Identifying the hazards and assessing the risks to safety and health likely to result in accidents or injury to health at the place of work, and
2) Putting in place the necessary protective and preventative measures, unless the putting in place of any further measures is grossly disproportionate, having regard to the unusual, unforeseeable and exceptional nature of any circumstances or occurrences that may result in an accident or injury at work.

From the above, it is clear that if an employer cannot prove that s/he carried out the identification and assessment process, then s/he will fail the 'reasonably practicable' test. Arguably, prior to the 2005 act, an employer who did not carry out any assessment or identification process would have been held by the courts to have failed in their duty under the 1989 act; however, the new definition has left little room for argument as to what 'reasonably practicable' means.

Higher onus

Undoubtedly, the new definition places a much higher onus on the employer. This obligation is reinforced in the ensuing subsections that are "without prejudice to the generality of subsection (1)." For example, subsection (2)(e) of section 8 extends the employer's duty to providing systems of work that are planned, maintained and revised. The use of the word 'revised' makes it clear that this is not a static, once-off requirement.

Subsection (2)(k) imposes an obligation on employers to report accidents and dangerous occurrences. This subsection is in addition to the equivalent

obligations imposed by regulations 58 to 59 of the 1993 regulations.

As yet, the obligation to report has not been prescribed under the 2005 act, so in practice, the obligations under the 1993 regulations remain. Broadly, there is a requirement to notify the HSA if a 'dangerous occurrence', fatal accident, or an accident rendering a person incapable of work for more that three consecutive days, occurs in the course of work.

***Informing employees**

The 1989 act dealt with giving information to employees under a general provision[19]. This was spelt out in a little more detail in the 1993 regulations[20], which requires employers to provide information to employees about risks and protective and preventative measures.

The 2005 act brings this obligation further again and, for instance, requires employers to provide information that is "reasonably likely to be understood by the employees concerned[21]."

In the past, employers have used health and safety issues as a reason for not employing foreign nationals or disabled persons. Increasingly, these reasons are being looked at more critically. The *Equality Act* requires the employer to reasonably accommodate employees. Now, the *Health and Safety Act* requires employers to ensure that information is disseminated so that the employees understand it. Strict compliance would require, for example, warning signs to be in several languages and put at a height where they would be reasonably legible to wheelchair users.

The 2005 act requires that the information given includes information on:

1) Hazards
2) Protective and preventative measures (task specific if necessary), and
3) The names of the safety representatives and persons to contact in an emergency situation[22].

***Instruction training and supervision of employees**

The 1989 act imposed a general obligation on employers to provide instruction, training and supervision of employees [23].

While this was expanded somewhat in the 1993 regulations[24], the 2005 act requires[25], *inter alia*, that employers ensure that employees receive adequate training in health and safety. In particular, where a specific task is assigned to an employee, the employer must ensure that s/he is given adequate information and instructions[26] and that the employee's capabilities are taken into account.

This section also requires an employer to protect a class or classes of 'particularly sensitive' employees against specific dangers that affect them. The act does not define what is meant by 'sensitive'. It is therefore open to interpretation as to whether it refers to sensitivities of a psychological nature, or physical sensitivity, such as an allergy to particular products that might be used in the workplace.

The act also states that, in assigning a specific task, an employer can rule out an employee on the grounds of incapability. This section should be read in conjunction with the *Employment Equality Acts*. It requires the employer to consider if, with reasonable accommodation, an employee with a disability would be capable of carrying out the task.

***Obligation to non-employees in the workplace**

Section 12 imposes an obligation on the employer to ensure that individuals in a place of work are not exposed to risks to their health and safety. As in the 1989 act, "place of work" is widely defined to include "land or other location at, in, upon or near which work is carried on whether occasionally or otherwise", [27] and also specifically includes a tent, a trailer or a vehicle.

The term 'individuals' is likely to be interpreted by the court in the widest terms and would apply to invitees, visitors or trespassers. Therefore, employers (as opposed to owners of the premises/lands) have an obligation to identify and assess potential hazards in respect of anyone who might come onto the workplace. For example, employers at an open-cast mine would have to ensure that it is adequately fenced-off against the public at large.

***Duties of the employee**

The 2005 act has significantly augmented the duties of the employee in terms of their own health and safety.

Section 13 imposes a direct duty on the employee to comply with health and safety legislation – not simply a duty to co-operate – although the duty to co-operate still remains[28].

The 2005 act expands the duty by requiring the employee to attend training, undergo assessments and not engage in improper conduct or behaviour. Under the 1989 act, there was a question as to whether horseplay was included – the 2005 act leaves no doubt in this regard.

The most significant duty on the employee relates to the obligation to ensure that he is not under the influence of an intoxicant to the extent that he could endanger his own health and safety or that of another.

It is noteworthy that merely being under the influence is not sufficient. Therefore the pint at lunchtime may not of itself be sufficient evidence of breach of the legislation. Evidence of someone being intoxicated is notoriously difficult to prove.

The 2005 act imposes a duty on an employee, if reasonably required by the employer, to submit to tests for intoxicants by, or under the supervision of, a "competent person"[29].

It is worth looking at the circumstances that must exist in order to comply with this subsection:

- Submission for testing must be a reasonable requirement. We do not know how the courts would interpret 'reasonable' in this context. However, it is safe to say that testing, for example, administration staff, would be unlikely to be regarded as 'reasonable', whereas testing someone who handles explosives might
- This subsection is not meant to be used as a disciplinary tool; the employer must have good safety, health and welfare reasons for testing an employee
- The test applied must be appropriate, reasonable and proportionate – if the employee is required to give a blood sample when a breath or urine sample would be sufficient, this would not be reasonable or appropriate. Unless there was a particular circumstance, testing someone several times a day would not be proportionate
- Not only must the person giving the test be a qualified medical practitioner, but the doctor must "possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken." Given modern methods of testing for drugs and alcohol (which are non-invasive and can be carried out by the employee by providing a breath or urine sample), the requirement of having a doctor who has experience in testing seems to be unnecessary
- Undoubtedly there are data protection and privacy issues to be considered. The data protection commissioner is likey to take a keen interest in this issue, even though the commissioner has no direct function under this act
- Strangely, neither the HSA inspectors nor the gardaí are given similar powers, where they might be investigating a serious or fatal accident.

The employee's duty to report has also been extended to include any contravention of the relevant statutory provisions that might endanger the health and safety of the employee, or that of

any other person. This provision would, in the appropriate circumstance, require the employee to report instances where co-workers breach the legislation, for example, a sleeping employee, when s/he is supposed to be monitoring a process.

Equally the 2005 act provides that a person (whether an employee or not) shall not vandalise or recklessly damage safety equipment[30].

***Obligations of people who have control of the workplace**

This section obliges a person, who has control of a workplace, or control of or an obligation to maintain "to any extent" the access or egress to and from the workplace, or any article or substance used in the workplace, to ensure, so far as is reasonably practicable, that these are safe and without risk to health.

This is not a new provision. In fact the wording in the 1989 act and the 2005 act is very similar. However the definition of 'reasonably practicable' requires the person in control to carry out a risk assessment.

The text of this section makes it clear that the duty imposed is only to the extent of the person's obligation. For example, if a landlord has an obligation in a lease to maintain and repair a building, then the landlord does not have an obligation to remodel the entire building to make it safe.

The use of the term "non-domestic" in this section is presumably meant, for example, to exclude building contractors working on a person's home.

Footnotes

1. SI no 328/2005
2. Section 6(1) of the 1989 act
3. Section 13(1) of the 1989 act
4. Section 13(2) to (9) of the 1989 act
5. SI no 44/1993
6. 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC and 91/383/EEC
7. Regulation 10
8. Regulation 13
9. Regulation 15
10. Part five of the regulations
11. Part seven of the regulations
12. Part eight of the regulations
13. Part nine of the regulations
14. Part ten of the regulations
15. Except the *General safety and health provisions*, ie regulations 5 to 15 inclusive (see SI 392/2005). Sections 8 to 12 inclusive of the 2005 act have replaced these provisions
16. Although associated statutory provisions set out in the first schedule of the 2005 act still remain
17. As defined by of the *Employment Agency Act, 1971*, ie someone in the business of seeking or supplying such persons whether for reward or not
18. Section 2(6). In 1995, the European Commission issued a 'reasoned opinion' (1995/2136) citing the Irish government's failure to define "as far as reasonably practicable" as required in the directive. The definition in the 2005 act was brought in to deal with that issue. The commission has threatened to bring the UK to the European Court over its failure to define this phrase in its legislation
19. Section 6(2)(e)
20. Regulation 11
21. Section 9(a)
22. Section 9(b)
23. Section 6(2)(e)
24. Regulation 13 and 26
25. Section 10(1)(b)
26. Section 10(1)(c)
27. Section 12
28. Section 13(1)(d)
29. Defined, for the first time in health and safety legislation, as a person who "possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken." G

Boyce Shubotham is a member of the Employment and Equality Law Committee.

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COMPETITION

Contract law

Local authority – whether decision of respondent to award refuse contract to one operator anti-competitive – whether acts of respondent amount to inducement of breach of contract – Waste Management Act, 1996, *section 75* – Competition Act, 2002, *sections 4 and 5*

The respondent sought tenders from waste-disposal companies for the collection of refuse from low-income households and awarded the contract to a competitor of the applicant's. Previously, the respondent had operated a system whereby the applicant and other such companies invoiced the respondent directly in respect of refuse collection from low-income households, who had a choice as to which company was to collect their refuse, and were paid by the respondent for them. The applicant contended that the new scheme introduced by the respondent was anti-competitive and induced its existing customers to breach their contracts with the applicant. The respondent argued that there was an objective justification for introducing the new scheme, namely that the respondent was not entitled to pay a third party for a waiver scheme by virtue of section 75 of the *Waste Management Act, 1996*.

Dunne J refused the relief sought, holding that:

1) The basis upon which the previous scheme operated was in breach of section 75 of the 1996 act and, in those circumstances, the respondent was obliged to introduce the new scheme complained of by the applicant and, accordingly, there was an objective justification for the respondent's actions, irrespective of whether they induced breaches of contract by low-income households with the applicant
2) While there was an element of exclusivity, in that only one contractor would provide the service, as long as the service was provided on behalf of the respondent in accordance with the provisions of sections 33 and 75 of the 1996 act, there was no breach of sections 4 or 5 of the *Competition Act, 2002*.

***Mr Binman Ltd v Limerick City Council*, High Court, Miss Justice Dunne, 15/6/2005** [FL11053]

CRIMINAL

Arrest

Legality of arrests – whether bona fide *suspicion of garda reasonable – whether direction of superior officer to arresting garda to arrest in conjunction with other information in knowledge of arresting garda sufficient to create reasonable suspicion* – Offences Against the State Act, 1939, *section 30*

Section 30(1) of the *Offences Against the State Act, 1939* provides that "a member of the gardaí … may without warrant … arrest any person … whom he suspects of having committed … an offence under any section or subsection of this act." The plaintiffs had been arrested and charged with offences under section 30 of the 1939 act. The High Court ruled that the arrests were unlawful on the grounds that the arresting officers did not have the requisite suspicion for the purposes of section 30 and damages for unlawful arrest were awarded against the state accordingly. The state defendants appealed the decision of the High Court on the grounds that the arresting officers relied for their suspicions, among other things, on the information provided to them by their superior officer that the plaintiffs were purportedly members of an illegal organisation and they had also seen an intelligence document containing that information themselves.

The court allowed the appeal in respect of the first plaintiff and substituted a finding that the arrest of Garda Walshe was valid, and dismissed the appeal in respect of the second plaintiff, holding that the suspicion of the arresting garda that an offence had been committed did not have to be proved in any particular manner and could be established by direct evidence or could be inferred from the circumstances, but was always a fact that had to be established before an arrest under section 30 of the act of 1939 could be regarded as lawful. Such suspicion could be informed by a direction to arrest given by a superior officer. However, in order to form the requisite suspicion required by section 30, the arresting officer had to have some understanding of the underlying rationale or basis for the arrest.

***Walshe and Bedford v Fennessey and others*, Supreme Court, 28/7/2005** [FL11083]

Arrest, European law

European Arrest Warrant Act, 2003 – *whether the Irish courts should make an order surrendering the respondent, an Irish citizen, to the Spanish authorities to stand trial for the offence of homicide*

The judicial authority in Spain issued a European arrest warrant in respect of the respondent and requested his arrest and surrender by the Irish authorities so that he could be prosecuted in Spain for the offence of homicide. The respondent objected to the making of an order directing his arrest and surrender on the grounds of abuse of process, delay, breach of his rights under the constitution and/or the *European convention on human rights*, that it would be unjust, oppressive or invidious to surrender him and that the purpose of the European arrest warrant was to procure his return to Spain for the purposes of carrying out a form of preliminary enquiry or investigation.

Finnegan P ordered that the respondent be surrendered, holding that:

1) There was no abuse of process and the delay was not such as to prevent the court making an order for the respondent's surrender. Further, there was nothing to suggest that, in surrendering the respondent for trial in Spain, his constitutional rights or the rights enshrined in the convention would be abrogated and the respondent's surrender would not be unjust, oppressive or invidious
2) The respondent was a person against whom Spain intended to bring proceedings for the offence to which the European arrest warrant related, namely homicide, and accordingly the surrender of the respondent should be ordered.

***Minister for Justice, Equality and Law Reform v McArdle*, High Court, Mr Justice Finnegan, 27/5/2005** [FL11105]

Road traffic, drink driving

Section 13 of the Road Traffic Act, 1994 – *whether it was an offence to fail or refuse to comply with a requirement of a garda to provide two specimens of breath in the manner indicated by that garda – whether it was sufficient compliance with s13 of the 1994 act to simply*

exhale into the apparatus

The defendant was convicted in the District Court of failure to comply with a requirement of a member of An Garda Síochána to provide two specimens of breath, in the manner indicated by the said garda, contrary to section 13(2) of the 1994 act, following her arrest for drunk driving. The defendant appealed her conviction to the Circuit Court and the matter came before the Supreme Court by way of case stated. The court was asked to determine, firstly, whether s13(2) of the 1994 act made it an offence to refuse or fail to comply with a requirement of a garda to provide two breath samples in the manner outlined by that garda. If the answer to that question was no, then, secondly, whether it was sufficient compliance with the provisions of s13(1) to simply exhale into the apparatus designed for determining the concentration of alcohol in an arrested person's breath. In this case, the defendant provided at least two specimens of breath by exhaling into the apparatus, but those specimens were not sufficient to allow the apparatus to determine the quantity of alcohol, if any, in the specimen.

The Supreme Court (McCracken, Kearns JJ, Murray CJ dissenting) answered the first question in the negative and the second question in the affirmative, holding that:

1) The charge in this particular case and the conviction recorded in respect thereof was one that was not provided for by s13 of the 1994 act and thus, by virtue of the requirement to construe penal statutes strictly, the first question must be answered 'no'
2) The specimen of breath provided must be such as to enable the concentration of alcohol in the breath to be measured. Therefore, merely exhaling into the apparatus is not sufficient compliance with the requirement under s13 unless it enables the concentration of alcohol in the breath to be determined.

***DPP v Brigid Moorehouse*, Supreme Court, 28/7/2005** [FL10999]

FAMILY

Practice and procedure

Appeal – case remitted back for rehearing – scope of rehearing – procedure to be adopted – proper provision – Family Law Act, 1995, *section 16*

The High Court granted a decree of judicial separation to the applicant, placed a value of €10m on the family business and, when endeavouring to make proper provision for the parties, among other things, directed the respondent to pay the applicant €2m before February 2004, €1m before February 2005 and €1m before April 2006. The court also granted the respondent an option of acquiring the applicant's interest in the family home, which had been valued at €1m, and directed the respondent to make a contribution of €100,000 to the applicant's costs. The respondent appealed that part of the order to the Supreme Court. The case was remitted back to the High Court to consider and make findings in the issues of what mechanisms could be used for the extraction from the company of any funds ordered to be paid to the applicant and the tax effects on the companies or on the respondent of the extraction of the relevant funds. The valuations of the family business and home were not interfered with and were not referred back. The applicant issued a notice of motion seeking directions as to the mode and manner in which the High Court should conduct the rehearing as directed by the Supreme Court.

McKechnie J held that the task of determining the scope of the rehearing had to be approached by considering what was the proper interpretation of the Supreme Court's intention as found in and gathered from a reading of its judgment and that the Supreme Court did not direct a rehearing on all matters, as suggested by the applicant, particularly in respect of the valuation to be placed on the family business and home. However, within the confines within which the case was remitted back, the trial court was obliged to make proper provision for the parties, having regard to section 16 of the *Family Law Act, 1995* and among the factors relevant to that assessment were the transaction costs and tax liability involved in implementing the provisions of the court order. The value of the family home was also a factor to be considered when making proper provision. Costs awards should always be available as a matter of discretion to the trial court in family law cases.

***D v D*, High Court, Mr Justice McKechnie, 4/5/2005** [FL11012]

LAND LAW

Equity

Estoppel by representation – conditions giving rise to estoppel by representation – land registered by defendants prior to plaintiff's registration – plaintiff's registration prima facie *void – whether defendants estopped from asserting title to land by virtue of their prior registration* – Registration of Deeds Act 1707, *section 5*

The plaintiff purchased a plot of land in 1981. The vendor subsequently sold the remainder of her estate to the defendants. The defendants registered the lands purchased and included in the registration the plot that the plaintiff had previously purchased. The defendants were subsequently informed by the vendor's solicitor that the plot in question had been previously sold to the plaintiff. A year later, the plaintiff registered the same plot. The plot was allowed to become derelict and, some years later, Dublin County Council served notices on the parties to clear the site. The defendants went into possession of the plot in 2001 and cleared it, as the plaintiff had not received his notice. The plaintiff then sought injunctions against the defendants and a declaration that they were estopped by their conduct from asserting that the plot was included in their prior registered deed.

O'Sullivan J ordered that the defendants refrain from interfering with the plaintiff's beneficial ownership, occupation, possession and enjoyment of the disputed plot, holding that, *prima facie*, by section 5 of the *Registration of Deeds Act 1707*, the plaintiff's deed should "be deemed and adjudged as fraudulent and void" as against the defendants' prior registered deed, but that an equity arose in favour of the plaintiff due to estoppel. Four conditions had to be satisfied for such an estoppel to arise, namely detriment, expectation or belief, encouragement and no bar to the equity. Where one solicitor formally raises with another the question of his client's title and subsequently asserts his client's title to that other solicitor, both had to be aware that it was being engaged in for the purpose of relying on that title, and the fact that the defendant's solicitor did not reply to the plaintiff's assertion of his title to the plot amounted to a representation on behalf of the defendants that they were not challenging the plaintiff's assertion as to his title. The plaintiff then relied on that representation to his detriment in contracting with a third party for the sale of the plot.

***McDonagh v Denton*, High Court, Mr Justice O'Sullivan, 15/4/2005** [FL11077]

PLANNING AND DEVELOPMENT

Planning permission

Whether the respondent's failure to comply with certain conditions of a planning permission required the cessation of development pursuant to such permission – Planning and Development Act, 2000, *section 160*

The applicant sought certain orders pursuant to s160 of the act of 2000, directing the respondent company to comply with specific conditions of a planning permission granted to it for the construction of a distributor road, and/or to carry out that development in conformity with the planning permission, as well as an injunction to restrain further road development works until those conditions were complied with.

Peart J refused the relief sought, holding that despite the respondent's failure to comply with certain conditions of the planning permission in a timely manner, in the circumstances of this case it was not appropriate for the court to intervene by way of making an order to cease development under the provisions of s160 of the 2000 act.

***Mountbrook Homes Ltd v Oldcourt Developments Ltd*, High Court, Mr Justice Peart, 22/4/2005** [FL10979]

TORT

Personal injuries

Negligence – duty of care – joint criminal enterprise – volenti non fit injuria – ex causa turpe non oritur actus – *whether the plaintiff agreed with the defendants to waive his legal rights – whether the defendant owed the plaintiff a duty of care having regard to the nature of the joint criminal enterprise* – Civil Liability Act, 1961

The plaintiff sought damages for injuries received as a result of a road traffic accident, which occurred when he was travelling as a passenger in a motor car that was the property of the first-named defendant and was then being driven by the second-named defendant. The second-named defendant admitted driving at an excessive speed but claimed that he had agreed, on the plaintiff's suggestion, to take the first-named defendant's car and see how fast it would go and enable the plaintiff to take a photograph of the speedometer that could be posted on the internet. Accordingly, the defendants pleaded that the plaintiff consented to the risks involved in travelling at excessive speed and was thereby precluded from pursuing his claim against the defendants. It was also pleaded that the plaintiff and the second-named defendant were involved in a joint criminal enterprise and that also precluded the plaintiff from pursuing his claim, and the defendant sought to rely on the doctrine of *ex causa turpe non oritur actus*. The defendants also sought to rely on the doctrine of *volenti non fit injuria*.

Finnegan P dismissed the plaintiff's claim, holding that:

1) The account provided by the second-named defendant as to what occurred on the evening of the accident was accepted. There was no agreement or contract between the plaintiff and the defendants whereby the plaintiff waived any right of action he might have in respect of the negligence of the defendants and, accordingly, the defence of *volenti non fit injuria* failed
2) In the circumstances of the case, it was not possible to determine the duty of care that the defendant owed to the plaintiff, having regard to the illegal enterprise upon which they were both engaged and, accordingly, it was not possible to determine whether or not there was a breach of that duty.

***Anderson v Cooke and Cooke*, High Court, Mr Justice Finnegan, 29/6/2005** [FL 11090] G

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Eurlegal

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

The *State aid action plan* – rebuilding from the foundation (part 1)

The metaphors surrounding the European Commission's recently-launched *State aid action plan* abound, but all allude to one indisputable fact: the new commissioner for competition, Neelie Kroes, is very serious about fundamentally rethinking state-aid policies and instruments.

And so, on 7 June 2005, the commission launched a wholesale review of the EU's state-aid regime with the publication of the *State aid action plan* (*www.europa.eu.int/comm/competition/state_aid/others/action_plan/saap_en.pdf*). Billed as a 'road map' for the reform of the state-aid rules from 2005-2009, the scope of the reforms to be pursued under the action plan can most readily be grasped by considering the panels on the following pages.

For the busy reader, the shape of how state-aid control will look in the future can thus be summarised as (a) a considerable expansion of the use of block exemption regulations (placing considerably more emphasis on the use of *ex post* control of state-aid measures), coupled with (b) a diminished role for the myriad state-aid notices, guidelines, frameworks, and so on.

But the substantive and procedural implications of the planned reforms merit a more in-depth study since, even at this very early stage in a four-year reform process, the alert practitioner will recognise both the opportunities and risks associated with a fundamental shift to what amounts, in EU competition law terms, to a 'legal exception' state-aid regime.

The first part of this article will describe the essential lines of the new state-aid architecture set out in the action plan, covering the most significant substantive and procedural aspects of the planned reforms. The second and final part (in next month's *Gazette*) will focus on

ROADMAP OF REFORMS 2005-2009 (INDICATIVE)

Modifications	2005/2006	2007/2008	2009
Substance	• Road map for state-aid reform, 2005-2009 • Regional aid guidelines • General block exemption (SME, employment, training, R&D, *de minimis*, regional, environment) • Communication, interest rates • Guidelines, R&D and innovation • Communication, short-term credit insurance • Communication, risk capital • Decision and guidelines on the services of general economic interest and transparency directive • Guidelines, environment • Framework on state aid	• Assessment/modification of the rescue and restructuring aid guidelines • Notice on state aid in form of guarantees • Communication on direct business taxation • Communication on state aid to public broadcasting • Possible additional block exemptions	• Assessment of the reform and review of existing state-aid rules
Consultation documents	• Communication on innovation	• Consultation document on possible modification of council regulation 659/99 • Consultation document on the different forms of aid	
Procedure	• Internal best practices guidelines • Promotion of state-aid advocacy • Increase monitoring of decisions and recovery • Possible proposal for amendment of council regulation no 994/98 (enabling regulation)	• Possible proposal for amendment of council regulation 659/99 (procedural regulation) • Notice on co-operation between national courts and the commission in the state-aid field	

the implications for innovation and research and development in Ireland flowing from the imminent draft communication on state-aid policy and innovation, one of the first concrete measures due to emerge from the implementation of the action plan.

The deadline for comments on the action plan was 15 September 2005.

Why reform?

According to both the commission and some member states, the state-aid rules have become too complex and intrusive:

- They impose disproportionate administrative burdens and delay for public authorities acting in ways that hardly distort competition at all. They catch very small, local-level government activity that has no practical impact on cross-border trade
- They obstruct flexible use of the non-profit sector to deliver government objectives
- They tend to treat as outright subsidies payments to companies that are designed to achieve social, cultural or environmental objectives and that confer little or no benefit on those that receive them.

According to the reform camp, this complexity leads to aid not being notified, even though it is distortional. It also leads to projects being abandoned for fear of state-aid problems, even when there is no likely distortion of competition arising. The enlargement of the EU to 25 member states in 2004 further underlined the need for reform.

Key objectives

The aim of the action plan is to present to the member states over the next four years a comprehensive and consistent reform package with three key objectives:

1) Less and better-targeted state aid
2) A refined economic approach
3) More effective procedures, better enforcement, higher predictability and enhanced transparency.

Better-targeted state aid

The whole of the action plan is encapsulated in the phrase "less and better targeted state aid". According to the commission, this *leitmotif* for these reforms should amount to more of a shift – as opposed to a fundamental change – in state-aid policy.

Better targeting of aid will mean a sharper focus on the *Lisbon agenda* key priorities. Thus, the action plan's reforms are firmly aimed at helping achieve the following objectives:

- Targeting innovation and R&D to strengthen the knowledge society
- Creating a better business climate and stimulating entrepreneurship
- Investing in human capital
- High quality services of general economic interest
- Better prioritisation through simplification and consolidation
- A focused regional-aid policy
- Encouraging an environmentally-sustainable future
- Setting up modern transport, energy and information and communication technology.

Targeting innovation and R&D

The spring 2005 European Council called for a redeployment of state aid in favour of support for certain horizontal measures (that is, non-company or sectoral-specific – or 'non-selective' – measures), most particularly for areas such as research and innovation and the reduction in regional disparities.

One of the action plan's first milestones will come before the end of October 2005, when the commission should publish a draft communication examining the ways in which its future state-aid policy could identify and better target specific market failures in areas that make a difference for the overall competitiveness of Europe. This communication will focus particularly on the role of state aid in encouraging innovation, particularly at the level of small and medium-sized enterprises, intermediaries (such as clusters and technology centres) and researchers – where, according to the commission, there is a an innovation bottleneck to the detriment of the overall EU economy.

Simplifying the structure

The commission has placed considerable emphasis in the action plan on the need to simplify the current state-aid architecture by targeting the most distortional and anti-competitive public subsidies while removing the administrative and legal risks associated from state-aid compliance from those activities considered either strategic for the development of the EU's economies or those that should not trigger competition concerns because (for example) they promote a social or cultural public good.

The panels (**below**) show how the action plan will, over the next four years, fundamentally change the architecture of the current state-aid regime.

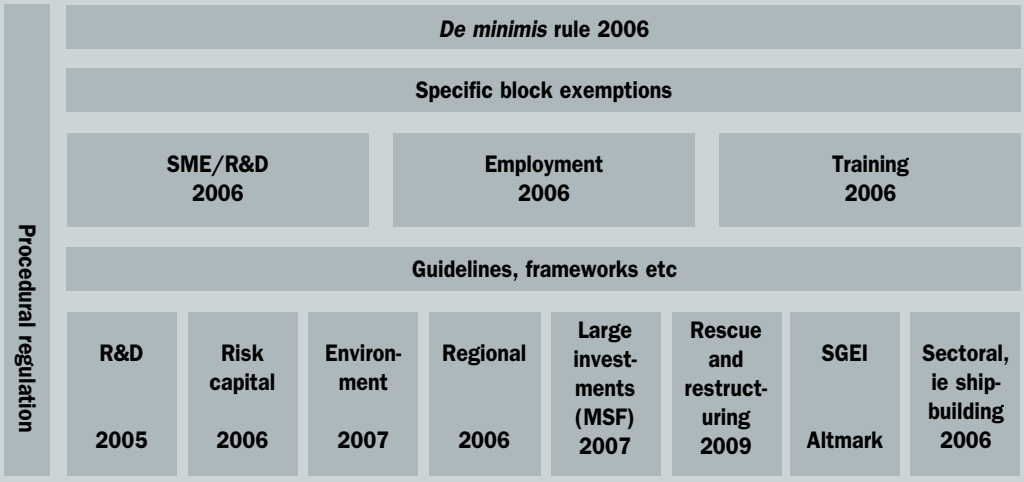
Block exemptions

Currently, if a measure can be considered to be a 'state aid' within the very wide definitions upheld by the European courts, most granting authorities will choose to notify the individual aid to the European Commission, thus complying with the notification obligation (article 88(3) of the *EC treaty*) as well as passing the burden of assessing the 'compatibility' of the aid to Brussels.

As suggested earlier, the success or otherwise of the action plan in achieving the three key objectives will depend to a large extent on considerably expanding the use of block exemption regulations, graphically demonstrated by comparing the block exemption 'boxes' in the panel (**below**).

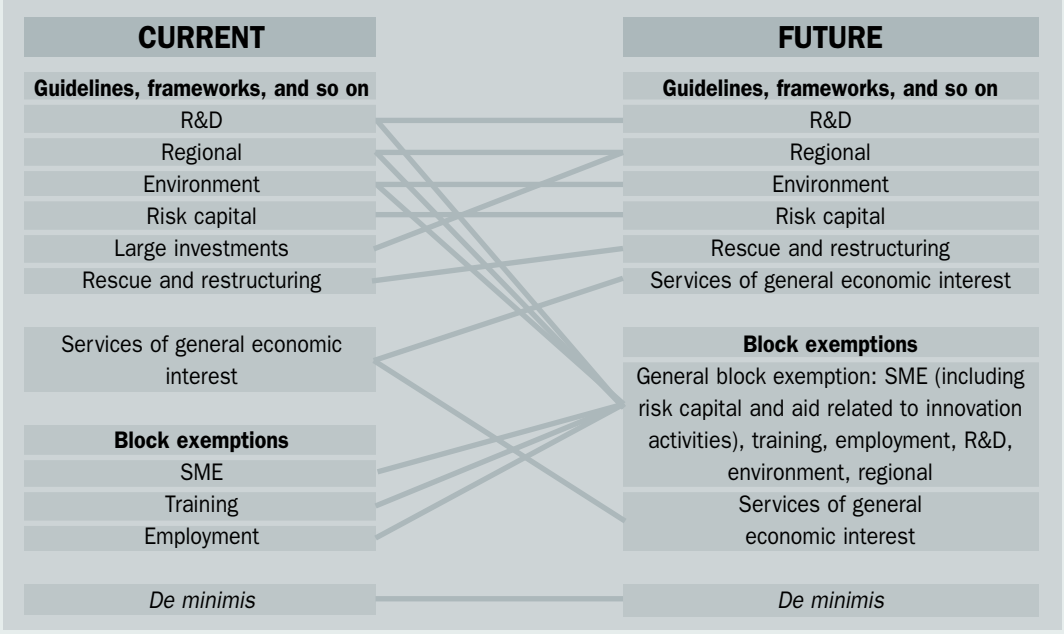
Block exempting a significantly increased range of state-aid measures will, according to the action plan's logic, not only

THE CURRENT STATE AID ARCHITECTURE AND EXPIRY DATES OF RELEVANT MEASURES



Please note that this is not an exhaustive list of soft law provisions

EXPECTED MAJOR CHANGES TO THE STATE-AID ARCHITECTURE 2005-2009



strengthen the effectiveness of control but also require the member states to take on more of the responsibility for state-aid control.

In 2005/2006, the commission plans to issue a general block exemption regulation exempting the following categories of aid from the obligation to notify to Brussels: aid related to training, SMEs, and employment (these measures already benefit from separate exemption regulations but are scheduled to be simplified and consolidated into one single regulation); research and development; the environment, employment; and regional development.

It is clear that this 'mega' block exemption regulation will also extend to state-aid measures for SMEs venturing on to the risk capital markets and developing innovation activities.

Thus, and in tones clearly reminiscent of the commission's white paper that eventually led to the modernisation of the EU competition rules embodied in regulation 1/2003, the re-structured state-aid policy will see the commission focusing its resources on the most distortional types of aid by setting clear positive and negative priorities. G

Conor Maguire is a Brussels-based solicitor. Part 2 of this article will appear in next month's Eurlegal.

Recent developments in European law

FREE MOVEMENT OF GOODS

Case C-212/03, *European Commission v French Republic*, 26 May 2005. The French public health code requires a prior authorisation procedure for the importation of medicinal products for personal use. Following a complaint, the commission investigated the compatibility of that procedure with EC law and took the view that it could obstruct the free movement of goods. It then brought these proceedings before the ECJ.

Several French measures were examined by the ECJ. For medical products authorised in France and in the member state of purchase, France required an import authorisation for certain products. The ECJ held that the mere fact that authorisation was required constitutes a restriction on the free movement of goods.

The court then looked at the French rules relating to a homeopathic medicinal product lawfully placed on the market in the member state of exportation. France required a prior authorisation for bringing in such a product.

The ECJ held that this was a restriction on the free movement of goods that, however, could be justified by the need to protect the health of humans.

Directive 92.73 lays down rules for the harmonisation of the manufacture, control and inspection of those medicinal products. It distinguishes between homeopathic medicinal products placed on the market without therapeutic indications and those with such indication. The former are subject to a special, simplified registration procedure while the latter are treated as medicinal products.

For products in the latter category, member states may introduce or retain rules for clinical tests of such products. In the case of this complaint, the products have been manufactured, controlled and inspected in accordance with the harmonised rules and have a sufficient degree of dilution to guarantee their safety.

The ECJ ruled that France has not shown that grounds of health protection require a prior authorisation procedure in respect of personal imports of such medicinal products.

The court then turned to medicinal products not authorised in France but authorised in the member state where they were purchased. French rules exempt from authorisation importation by personal transport but require authorisation for import where the importation is not through personal transport.

The ECJ held that grounds of health protection may justify restrictions on the free movement of goods, but those measures must comply with the principle of proportionality in relation to the objective pursued of ensuring the safeguarding of public health. France had not demonstrated the need in this case to make those imports subject to the authorisation procedure. It was for France to adopt an authorisation procedure adapted to the specific nature of those imports and the restrictive effects on intra-community trade that do not go beyond what is necessary to attain the objective pursued, and which is easily accessible and capable to being brought to completion within a reasonable period.

In the absence of those specific rules, the court held that France had failed in its obligations.

INTELLECTUAL PROPERTY

Case C-347/03, *Regione Autonoma Friuli-Venezia Giulia and ERSA v Ministero della*

Politiche Agricole e Forestali, 12 May 2005. 'Tocai friulano' or 'Tocai italico' is a vine variety grown in the Italian region of Friuli-Venezia Giulia and used in the production of various white wines. These wines are marketed under geographical indications such as 'Collio' or 'Collio goriziano'.

In 1993, the EC and Hungary concluded an agreement on the reciprocal protection and control of wine names. 'Tokaj' is a Hungarian geographical indication and to protect it, the agreement prohibited the use of the term 'Tocai' to describe Italian wines at the end of a period expiring on 31 March 2007.

Proceedings were started in Italy by regional agencies seeking to annul the national legislation implementing the prohibition provided for in the agreement. The Italian court referred the matter to the ECJ. The ECJ held that when the EC-Hungary agreement was concluded, the names 'Tocai friulano' and 'Tocai italico' did not constitute a geographical indication. The rules in the agreement are limited to geographical indications for wines. Thus, the prohibition complied with rules on geographical indications.

The court also held that there was no conflict with the provisions of the agreement on trade-related aspects of intellectual property (TRIPs). An argument had been advanced that the prohibition breached the *European convention on human rights,* as it was the deprivation of possessions with compensation. The court rejected this argument, as the prohibition did not exclude any reasonable method of marketing the Italian wines concerned. Even if there had been a control of the use of property, this interference was justified.

The objective of the prohibition was to reconcile the need to provide consumers with clear and accurate information on products with the need to protect producers on their territory against distortions of competition. Thus, the prohibition pursues a legitimate aim of general interest. The prohibition was proportionate to that aim, as a transitional period of 13 years was provided for, and alternative terms are available to replace the names 'Tocai friulano' and 'Tocai italico'. Thus, the court rejected the objections raised as to the validity of the prohibition at issue.

Joined cases C-456/02 and C-466-02, 10 May 2005. Regulation 2081/82 provides a system for the protection of geographical indications and designations of origin for agricultural products whose characteristics are linked to their origin.

Regulation 1892/2002 entered the designation 'feta' in the register of protected designations of origin. Germany and Denmark brought proceedings seeking to have the 2002 regulation annulled. Advocate General Ruiz Jarabo first considered whether 'feta' can be classified as generic. He considered that it has not become generalised within the EC. It is inextricably associated with a specific foodstuff: the cheese produced in a large area of Greece using sheep's milk or a mixture or sheep and goat milk by the artisan process of coagulation at normal pressure. He then went on to consider whether 'feta' is a traditional usage. He considered that it is. The word 'feta' has been established in Greece to describe traditional white cheese in brine made since ancient times. 'Feta' is linked with a large part of Greece, both historically and at the present time.

The quality and characteristics of feta cheese derive from the geographical surroundings where it is made. There is a basic connection between its colour, texture, flavour, composition and intrinsic properties on the one hand and, on the other, the natural environment from which it comes, the culture it reflects and the traditional production process used in Greece.

Greek legislation provides that the milk used must come from animals of indigenous breeds, reared according to historical methods and fed with foodstuffs from approved districts.

STATE AID

Case C-415/03, *Commission of the European Communities v Hellenic Republic*, 12 May 2005. In 1998, the European Commission approved the grant of a certain amount of aid to Greece to restructure Olympic Airways. The aid was for the period 1998 to 2002. In 2002, the commission started proceedings, as the restructuring plan had not been implemented and some of the conditions laid down by the decision approving the aid had not been fulfilled. The commission referred to the existence of new aid. This consisted of the toleration by Greece of the non-payment or deferment of the payment dates of VAT on aircraft fuel and spare parts, rent payable to airports for the period 1998 to 2001, airport charges owed to Spata Airport and a tax imposed on passengers on departure from all Greek airports.

The commission required Greece to recover from Olympic the second instalment of restructuring aid as well as the new aid that had been granted unlawfully.

While these proceedings were started, Greece adopted a law providing for the transfer to a new company, Olympic Airlines, of the personnel and assets of the former company Olympic Airways, but leaving the main liabilities with Olympic Airways. The ECJ found that this transfer made it impossible under national law to recover the debts of the former company from the new company. This transfer created an obstacle to the implementation of the commission's decision and the recovery of aid.

The purpose of the commission decision was to restore undistorted competition in the civil aviation sector. This was seriously compromised by the actions of Greece. Greece has failed to fulfil its obligation to recover the amount of the restructuring aid from the beneficiary. In relation to the recovery of the additional aid, Greece has also failed to fulfil its obligations. G

Doing the McCann-can
A large proportion of the recipients at the 2 September parchment ceremony are solicitors with McCann FitzGerald. Pictured are *(back row, from left)* Shane Sweeney, Karen Thompson, Dara McNulty, Lisa Smyth, Edward Traynor, Joshua Hogan and Rory O'Malley; *(front row, from left)* Helen Whittaker, Carol Monahan, Edel O'Herlihy, Anne Brennan, Serena Connolly, Aimee Madden and Claire Kelly

Multi-disciplinary practices?
Law Society president Owen Binchy and his wife Eimear with their son Michael, who was recently called to the bar

Lay down the law
Jenny Lynch (ex Butterworths), who recently joined the rapidly expanding legal and tax publishers, Tottel Publishing, as their sales and marketing manager

Findlater Scholarship commemoration

A specially commissioned sculpture was recently installed in the atrium of the Law School at Blackhall Place. The glass piece, by Egyptian sculptor Salah Kawala, commemorates the winners of the school's Findlater Scholarship and the scholarship's founder, Law Society past-president William Findlater.

The scholarship, established in 1877, is awarded to students who perform best in the PPCI and PPCII exams and has encouraged high levels of achievement, ambition and determination for those who sit the FE1 exams.

The names of past scholarship winners are engraved on the sculpture, and some of these legal luminaries turned out in style for the unveiling.

Stuart Gilhooly, chair of the society's Education Committee, acted as master of ceremonies and president Owen Binchy took the stand to lead the way for Alex Findlater, who spoke of his great-grand-uncle William.

Born of a highly regarded Dublin family, the young William was admitted as a solicitor in 1846, in the midst of the Great Famine, his fees having generously been paid by his uncle. William also served for four years as MP for Monaghan in the British parliament, during which time he played an active part in the passing of Gladstone's 1881 *Land Act* and the *Arrears Act* of 1882.

On news of his death in April 1906 at the age of 82, *The Irish Times* said: *"The deceased took part in the management of many charitable and other public institutions in Dublin. He was the chairman and trustee of the Solicitors' Benevolent Association that he founded 23 years earlier, and a member of the Dublin Benevolent Society of St Andrew. He was for 31 years associated with charitable work for the Royal Hospital for Incurables in Donnybrook and was for 44 years a Council member of the Incorporated Law Society. He was president of the Statistical and Social Inquiry Society of Ireland for 1891/1892 and during his tenure one of the papers presented was on 'The fusion of the two branches of the legal profession'."*

In conclusion, Alex Findlater asked "Do I understand why this fusion has never come to pass when I reflect: solicitors were knighted, but seldom judges and never barristers. Is that a reflection on the standing and integrity of the two branches of the legal profession? I leave you with that little thought."

The sculpture in all its glory


President Owen Binchy


Alex Findlater, great grandnephew of William


Salus populi suprema est lex
Pictured at the launch of *Discrimination law*, the latest Law School textbook, on 4 August at Blackhall Place are co-author John Eardly, co-author Michelle Ní Longáin of BCM Hanby Wallace, Equality Tribunal director Melanie Pyne, the Law School's Jane Moffat, and co-author Dr Fergus Ryan

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 4 October 2005)

Regd owner: John J Kelly; folio: 23818; lands: townland of Cahiracon and barony of Clonderlaw; area: 8.1013; **Co Clare**

Regd owner: Catherine Hill (deceased); folio: 4751; lands: townland of Cloncolman and barony of Islands; area: 12.0824 hectares; **Co Clare**

Regd owner: Jeremiah T O'Keeffe; folio: 2462; lands: plots of ground being part of the townland of Gooseberryhill in the barony of Dunhallow and county of Cork; **Co Cork**

Regd owner: Michael and Catherine O'Sullivan; folio: 50569F; lands: plots of ground being part of the townland of Carrigrohane in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Adrian Joyce; folio: 4609L; lands: plots of ground situate to the north of Glen Heights Road in the parish of St Anne's Shandon and the county borough of Cork; **Co Cork**

Regd owner: William Gerald Johnstone, Rosbeg, Co Donegal; folio: 17146; lands: Middletown; area: 10.4219 and 0.7207 hectares; **Co Donegal**

Regd owner: Mary Tourish, Drumbeg, Raphoe, Co Donegal; folio: 21930; lands: Drumbeg; area: 0.2023 hectares; **Co Donegal**

Regd owner: Neil McElhinney, Dooish, Ballybofey, Co Donegal; folio: 41061; lands: Dooish; area: 0.2230 hectares; **Co Donegal**

Regd owner: Joseph Morris and Maria Morris, Main Street, Convoy, Co Donegal; folio: 24739F; lands: Convoy Townparks; area: 0.0560 hectares; **Co Donegal**

Regd owner: Catherine Doonan; folio: DN12015; lands: property situate in the townland of Farranboley and barony of Rathdown, part of the land with the cottage thereon situate on the north side of Mulvey Park in the village of Windy Arbour; **Co Dublin**

Regd owner: Breda Keogh; folio: DN46140L; lands: property known as no 13 Cashel Avenue, situate in the parish of Crumlin and district of Terenure; **Co Dublin**

Regd owner: Sarah McNamara; folio: DN118515F; lands: property known as 51 Ringsend Park Cottages, situate in the parish of Donnybrook and district of Pembroke; **Co Dublin**

Regd owner: Liam O'Maolaodha and Eileen Bean Ui Mhaolaodha; folio: DN28825L; lands: property situate in the townland of Clondalkin and barony of Uppercross, situate to the north of Monastery Road in the town of Clondalkin; **Co Dublin**

Regd owner: Maria Goggin; folio: DN139243F; lands: property known as no 6 Charnwood Court, Clonsilla, being part of the townland of Clonsilla and barony of Castleknock; **Co Dublin**

Regd owner: Kisch International Limited (limited liability company); folio: DN70112L; lands: property situate in the townland of Greenhills and barony of Uppercross; **Co Dublin**

Regd owner: Marie Reid; folio: DN12653; lands: property situate in the townland of Ballyboden and barony of Rathdown, situate on the west side of Whitechurch Road in the village of Ballyboden; **Co Dublin**

Regd owner: Michael Flood; folio: DN3327; lands: property situate in the townland of Gallanstown and barony of Uppercross situate on the north side of the road, leading from Gallanstown House to the Sixth Lock, Grand Canal; **Co Dublin**

Regd owner: Peter Briggs; folio: 15208F; lands: townland of Longford and barony of Killian; area: 2.590 hectares; **Co Galway**

Regd owner: Bridie Davoren; folio: 16964F; lands: townland of Ballinfoile and barony of Galway; **Co Galway**

Regd owner: Michael Cunniffe; folio: 64769F; lands: townlands of Lisdeligny and Lurgan More and barony of Longford; area: 10.3574 hectares and 0.5587 hectares; **Co Galway**

Regd owner: Mary McLoughlin; folio: 14324; lands: townland of (1) Gortnagier East (part), (2) Glenamaddy (part), and barony of (1) and (2) Ballymoe; area: (1) 24 acres, 38 perches, (2) 1 acre, 1 rood, 35 perches; **Co Galway**

Regd owner: Nicholas Ellis and Ailsa Ellis; folio: 13307F; lands: townland of Mountscribe or Moneyscreebagh and barony of Kiltartan; area: 0.2023 hectares; **Co Galway**

Regd owner: Mari Saville; folio: 42996; lands: townland of (1) Ungwee, (2) Roscrea and barony of Ballynahinch; area: 4.1634 hectares and 3.7256 hectares; **Co Galway**

Regd owner: James Finnerty (deceased); folio: 23339; lands: townland of townparks (2nd division) and barony of Clare; area: 10 perches and 17½ sq yards; **Co Galway**

Regd owner: Stephen Fahy; folio: 31063F; lands: townland of Balllindooley and barony of Galway; area: 0.101 hectares; **Co Galway**

Regd owner: Thomas Lavelle; folio: 39781F; lands: townland of Killaloonty and barony of Clare; area: 0.22 hectares; **Co Galway**

Regd owner: Zwardsland Properties Ltd; folio: 10533F; lands: townland of Coarha More and barony of Iveragh; **Co Kerry**

Regd owner: John Cunningham; folio: 3247; lands: Baunfree and barony of Kells; **Co Kilkenny**

Regd owner: Sean and Bernadette McCabe; folio: 16895; lands: Newpark lower and barony of Gowran; **Co Kilkenny**

Regd owner: AXA Insurance Limited; folio: 17344; lands: Kilminchy and barony of Maryborough East; **Co Laois**

Regd owner: Liam O'Heideain; folio: 883L; lands: townland of Shannabooly and barony of North Liberties; **Co Limerick**

Regd owner: Mary McHugh, The Twenties, Drogheda, Co Louth; folio: 8400; lands: Moneymore; area: 10.1171 hectares; **Co Louth**

Regd owner: Martin Treacy, Gorvilla, Togher, Co Louth; folio: 7177; lands: Beltichburne; area: 4.9870 hectares; **Co Louth**

Regd owner: Julia O'Malley and Charles O'Malley (deceased) (as tenants-in-common in equal shares); folio: 42710; lands: townland of (1) Corracrow, (2) Creggawatta and barony of Kilmaine; area: (1) 4.4009 hectares, (2) 2.0082 hectares; **Co Mayo**

Regd owner: Joseph McDonagh; folio: 1992F; lands: townland of Askillaun and barony of Murrisk; area: 5.0128 hectares and 0.4400 hectares; **Co Mayo**

Regd owner: Lorraine Ronan, Cookstown Cottage, Ashbourne, Co Meath; folio: 20771F; lands: Cookstown; area: 0.0670 hectares; **Co Meath**

Regd owner: Eileen McCullough, Elmgrove, Gormanstown, Co Meath; folio: 24787; lands: Sarsfieldtown, Gormanstown; Co Meath; area: 62.8690 hectares and 7.0540 hectares; **Co Meath**

Regd owner: Patrick Doyle, Blackhall, Dunboyne, Co Meath; folio: 499F; lands: Blackhall Little; area: 0.2048 hectares; **Co Meath**

Regd owner: Peter Toal, Tulleevan, Smithboro, Co Monaghan; folio: 9251; lands: Tulleevin; area: 12.8639 hectares; **Co Monaghan**

Regd owner: Representative Church Body; folio: 1905; lands: Largy; area: 1 acre, 17 perches and various leases; **Co Monaghan**

Regd owner: Timothy Ryan; folio: 870; lands: Rath and barony of Clonlisk; **Co Offaly**

Regd owner: Patrick Patterson; folio: 1621F; lands: townland of (1) and (3) Ballbane Lower, (2) Coosaun and barony of Castlereagh; area: (1) 7.7649 hectares, (2) 0.2731 hectares, (3) 7.0668 hectares; **Co Roscommon**

Regd owner: Joseph Harrington; folio: 11117F; lands: townland of Cuilmore and barony of Athlone South; area: 8.498 hectares; **Co Roscommon**

Regd owner: Frank Farry; folio: 12525; lands: townland of Mocmoyne; **Co Roscommon**

Regd owner: Patrick Winston; folio: 18627; lands: townland of Ballinloughquarter and barony of Castlereagh; area: 0.7840 hectares; **Co Roscommon**

Regd owner: Anne Donnelly; folio: 25039; lands: townland of (1) and (2) Curry (ED Elia) and barony of Roscommon; area: 1.0670 hectares and 1.0011 hectares; **Co Roscommon**

Regd owner: Patrick Kivlehan; folio: (1) 15668 and (2) 15669; lands: townland of (1) and (2) Culleenduff and (1) Grange West and barony of Carbury; area: (1) 6.1942 hectares and 5.2026 and (2) 1.5600 hectares; **Co Sligo**

Regd owner: Frank Drohan, Thomas Drohan and Brian Drohan; folio: 3806F; lands: plot of ground known

as 147 Viewmount Park in the parish of Ballynakill, Division Farranshoneen (pt 1) and in the county borough of Waterford; **Co Waterford**

Regd owner: Martin Terence Coyne, Bryanstown, Ballinea, Co Westmeath; folio: 17924; lands: Bryanstown; area: 5.0585 and 8.2576; **Co Westmeath**

Regd owner: Faser Court Limited; folio: 13510; lands: Coolishal and barony of Gorey; **Co Wexford**

Regd owner: Faser Court Limited; folio: 13511; lands: Coolishal and barony of Gorey; **Co Wexford**

Regd owner: Charlotte Anne Hanbidge; folio: 2441; lands: townlands of Calverstown and Bullhill and barony of Narragh and Reban East; **Co Wicklow**

Regd owner: Patrick and Elizabeth Dempsey; folio: 8494F; lands: townland of Lamberton and barony of Arklow; **Co Wicklow**

WILLS

Black, Mary (deceased), late of 5 Ascal Brugha, Drogheda, Co Louth. Would any person with any knowledge of a will executed by the above named deceased, who died on 25 November 2004, please contact Smyth & Son, Solicitors, 30 Magdalene Street, Drogheda, Co Louth; tel: 041 983 8616, fax: 041 983 5194

Daly, Joseph Daly (deceased), late of Cullen, Mallow, Co Cork. Would any person having knowledge of a will executed by the above named deceased, who died on 17 March 2003, please contact Brian D O'Brien & Co, Solicitors, 23 Main Street, Swords, Co Dublin; tel: 01 840 1447, fax: 01 840 7264

Daly, Margaret Daly (deceased), late of Cullen, Mallow, Co Cork. Would any person having knowledge of a will executed by the above named deceased, who died on 24 September 2003, please contact Brian D O'Brien & Co, Solicitors, 23 Main Street, Swords, Co Dublin; tel: 01 840 1447, fax: 01 840 7264

Dowd, Thomas (deceased), late of 2 Beechmount, Clonakilty, Co Cork and formerly of 14 Highfield Park, Leixlip, Co Kildare. Would any person having knowledge of a will executed by the above named deceased, who died on 10 December 1999, please contact McCarthy & Co, Solicitors, 10 Ashe Street, Clonakilty, Co Cork; tel: 023 33348, fax: 023 33105, e-mail: info@mccarthy.ie

Gaines, Patrick Edward (orse Eamonn Gaines) (deceased), late of 32 Oakton Park, Ballybrack, Co Dublin. Would any person having knowledge of a will being made by the above named deceased, who died on 4 August 2005, please contact O'Leary Maher, Solicitors, 183 Howth Road, Killester, Dublin 3; tel: 01 833 1900, fax: 01 833 4991

Kearney, James (deceased), late of Crehelp, Dunlavin, Co Wicklow. Would any person having knowledge of a will made by the above named deceased, who died on 23 July 1960, please contact Stephenson, Solicitors, 55 Carysfort Avenue, Blackrock, Co Dublin; tel: 01 275 6759

McGillycuddy, (Richard Denis Wyer) (deceased) (the McGillycuddy of the Reeks), late of Bellmount House, Ballinea, Mullingar, Co Westmeath. Would any person having knowledge of a will made by the above named deceased, who died on 30 December 2004, please contact Actons, Solicitors, Newmount House, 22-24 Lower Mount Street, Dublin 2; reference MCG-1411; tel: 01 661 0655, fax: 01 661 0664, e-mail: lawyers@actons.ie

Maxwell, Kathleen (Kay) of 6 Old Farm, Sophie Barrett Residence, Lower Kilmacud Road, Dublin 18, formerly of Park Avenue, Sandymount, Merrion Village Apartment, Dublin 4, also Palmerstown Apartments, Milltown, Dublin 14 and 10 Auburn Drive, Killiney, Co Dublin. Would anybody having knowledge of the whereabouts of a will for the above named Kathleen (Kay) Maxwell, please contact Donal T McAuliffe & Co Solicitors, 57 Merrion Square, Dublin 2; tel: 01 676 1283

Mulcahy, Margaret (deceased), late of Ballybeg, Brosna, Co Kerry. Would any person having knowledge of the whereabouts of the original will of the above named deceased, who died on 23 September 2002, please contact Dennison Solicitors, Main Street, Abbeyfeale, Co Limerick

O'Brien, Anne (otherwise Annie) (deceased), late of 13 Marguerita Villas, Dean Street, Cork. Would any person having knowledge of the original will dated 11 July 1985 made by the above named deceased, who died on 29 April 2005, please contact Patrick Mullins of Dillon Mullins & Company, Solicitors, Lower O'Connell Street, Kinsale, Co Cork; tel: 021 477 2000

MISCELLANEOUS

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 048 3026 1616, fax: 048 3026 7712, e-mail: norville@danefisher.com

London solicitors will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU; DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 816723, e-mail: arobbins@parfitts.co.uk

Seven-day publican's licence for sale – please contact Walter P Toolan & Sons, solicitors, High Street, Ballinamore, Co Leitrim; tel: 071 964 4004 or fax: 071 964 4788 or e-mail: law@wptoolan.com

Office suite to let: The Capel Building. Two offices/secretarial area. Phone lines/fax/broadband in place. Parking optional. Suit barristers or solicitors. Rent: €16,000 per year. To view, tel: 087 417 3515

Seven-day liquor licence. Contact Garavan & O'Connor, Solicitors, Castlebar, Co Mayo. Ref: ROC or MC

Ordinary seven-day licence for sale. Contact Gallagher McCartney, solicitors, New Row, Donegal Town, Co Donegal; tel: 074 972 1753 or fax: 074 972 2279

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Liam Bowe

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the house and premises situate at number 3 Suirside Place, Main Street (now known as Liberty Square), in the town of Thurles, barony of Eliogarty and county of Tipperary, being part of the property believed to be held under an indenture of lease made and executed in or about the year 1820, having been demised by the owners thereof to one Ellen Boyton for a long term of years at a yearly rent of £3 sterling, and which term of years is believed to be still existing.

Take notice that the applicant, Liam Bowe, intends to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the 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, Liam Bowe, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Tipperary for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freeholder version in the property are unknown or unascertained, which said application should be heard on Monday 17 October 2005 at 10.30am at the

Courthouse, Clonmel in the county of Tipperary or at the first opportunity thereafter.
Date: 4 October 2005
Signed: Butler, Cunningham & Molony (solicitors for the applicant), Liberty Square, Thurles, Co Tipperary

In the matter of the *Landlord and Tenant Acts, 1967-1994* and *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Michael Smith and Mary Smith
Take notice that any person having a superior interest in the following property: all that and those the premises at 1 and 2 John Street in the parish of St Paul and city of Dublin, being part of the property comprised in and demised by an indenture of lease dated 5 July 1898 and made between the right honourable lord mayor, aldermen and burgesses of Dublin of the first part, Henry Torrens Anstruther and William Hayes Fisher, two lord commissioners of her majesty's treasury of the second part and James Walker of the third part for the term of 150 years from 25 March 1897, subject to the yearly rent of £10 (now €12.70) but indemnified against the entire, thereby reserved and to the covenants on the part of the lessee and the conditions therein contained.

Take notice that the applicant, Michael Smith and Mary Smith of 3 Seamount Drive, Malahide, in the county of Dublin, being the persons entitled under the provisions of section 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, propose to purchase the superior interest of William Enright in the lands described in above by application to the Dublin county registrar, and any person, including William Enright, having an interest in the said premises are called upon to furnish evidence to the below named within 21 days of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar for the city of Dublin at the end of 21 days from the date of this notice for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the leasehold reversion are unknown or unascertained.
Date: 4 October 2005
Signed: Brian D O'Brien & Co (solicitors for the applicants), 23 Main Street, Swords, Co Dublin

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978*: an application by John Meagher

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Take notice any person having an interest in the freehold estate in the following property: all that and those the shop and premises known as 6 Mary's Abbey in the city of Dublin, bounded on the north by portion of the holding of Messieurs George John Alexander and companies holding, and on the west by said premises number 7 Mary's Abbey, containing in front to Mary's Abbey 18 feet, in the rear 16 feet and in depth from front to rear 42 feet, ten inches, be the said several admeasurements more or less.

Take notice that John Meagher intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the 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, John Meagher, intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Date: 4 October 2005

Signed: MacGinley (solicitors for the applicant), 3 Inns Quay, Chancery Place, Dublin 7

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Patrick Wall

Take notice that any person having an interest in the freehold or intermediate estate of the following property: all that the premises known as 3 Old Clonshaugh Road in the townland of Willsborough and barony of Coolock, comprised in folios 31842L and 52997L of the register for county Dublin and held under lease dated 6 April 1826, William Long and James Woodmason, for a term of 900 years from 1 November 1825, subject to an annual rent of £6.86 and under lease dated 10 March 1977 to James Doyle and Thomas Wall for a term of 150 years from 14 March 1977 at an annual rent of £0.05 respectively.

Take notice that Patrick Wall intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party or parties ascertaining that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title in the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 4 October 2005

Signed: C Grogan & Company (solicitors for the applicant), 33 Lower Ormond Quay, Dublin 1

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises at Eyre Street, Newbridge, Co Kildare: an application by Bradleys Limited

Take notice that any person having an interest in the freehold estate or any intermediate interest in the following premises: all that and those the hereditaments demised by an indenture of lease dated 6 July 1959 made between Thomas George Eyre Powell of the one part and Thomas Higgins of the other part and therein described as "that plot or piece of ground situate on the north west side of Eyre Street in the town of Newbridge, barony of Connell and county of Kildare, measuring in front to Eyre Street aforesaid 34 feet, 4 inches, and in breadth in the rear 39 feet, 8 inches, and on the south west side 49 feet, 7 inches, and on the north east side 22 feet, and 17 feet, 11 inches be the said several admeasurements more or less bounded on the south east by Eyre Street on the south west by premises in the possession of T Morrissey, on the north west by premises in the possession of Monsignor Miller and on the north east by premises in the possession of P Kavanagh, with the premises erected thereon and which said premises are shown on the map endorsed hereon and thereon edged in red", held for a term of 99 years from 1 November 1958, subject to yearly rent of £8 (old currency) thereby reserved, should give notice to the undersigned solicitors.

Take notice that the applicant, Bradleys Limited, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county of Kildare for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days of the date of this notice.

In default of any such notice being received, Bradleys 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 county of Kildare for such directions as may be appropriate on the basis that the person or persons beneficially entitled to such superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 4 October 2005

Signed: Stephen Maher (solicitors for the applicant), 6 The Courts, Main Street, Newbridge, Co Kildare

In that matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1987* and in the matter of an application by National Association of Building Co-operatives (NABCo) Society Limited

Take notice that any person having an interest in the freehold estate of those parts of the property described in the schedule hereto which are held under:

a) Fee farm grant dated 13 November 1852, made between Cooper Penrose and Reverend John Dennis Penrose of the one part and Reverend John Alexander of the other part
b) Fee farm grant dated 13 November 1924, made between Harold B Bonpas and Edwina M Brush of the one part and George William Shannon, Arthur C Sibthorpe and George Birney of the other part
c) Indenture of lease dated 28 October 1920, made between Maria Ryan of the one part and Patrick Higgins and Jane Higgins of the other part, and
d) Indenture of lease dated 20 July 1944, made between George William Shannon, Arthur C Sibthorpe, James C Evans, Alfred D Baldwin, James W Ross and William J Walsh of the one part and Bailey Son & Gibson Limited of the other part

should give notice of their interest to the undersigned solicitors.

And take notice that National Association of Building Co-Operatives (NABCo) Society Limited intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold and all intermediate interests in the property described in the said schedule, and any party asserting that they hold a superior interest in the said property is called upon to furnish evidence of their title thereto to the undersigned within 21 days of the date of publication of this notice.

In default of such notice being received, the said National Association of Building Co-operatives (NABCo) Society Limited intends to proceed with the application before the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.

Schedule: Bailey Gibson Printing Works, South Circular Road, in the parish of St James and city of Dublin.

Date: 4 October 2005

Signed: Gleeson McGrath Baldwin (solicitors for the applicant), 29 Anglesea Street, Dublin 2

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IN-HOUSE

General Counsel
Ref: SR15025 €neg

Our client, a well known multinational, requires a senior lawyer to look after legal and compliance issues for Ireland. Responsibilities will include: compliance, regulatory and corporate governance matters, litigation, transactional work and investment management. The ideal candidate will have at least 7 years pqe from private practice and/or a financial services company.

Listing Advisor
Ref: AW15681 to €50,000

A Listing Advisor is sought for one of the leading global financial institutions to join their expanding listings team. The role includes the review and listing of prospectus and close liaison with international investment banks and advisors. The successful candidate will have 1-3 years pqe, ideally in funds, investment or compliance.

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One of the leading insurance firms in Dublin is looking for a Compliance Officer. The role includes review of IFSRA legislation and the interpretation and implementation of these. You will deal closely with internal audit and monitor compliance policies and procedures. Ideally you will have legal or financial background, especially financial sales and experience in dealing with compliance issues.

PRIVATE PRACTICE

Banking
Ref: SR10515 to €80,000

Our client is a dynamic and progressive top tier firm and their financial services department has a strong reputation for national and international financial institutions. Due to continued expansion they are seeking to appoint lawyers with 2-4 years' post qualification experience who have had exposure to securitisation, corporate banking, structured and asset finance and mainstream banking.

Commercial Property
Ref: SR12879 to €90,000

A top 5 practice firm is looking for senior solicitors with at least 5 years experience in the areas of investment, taxation, commercial leases, lending, development, planning and environmental law. The successful candidate will have strong interpersonal skills, experience in construction law and be able to work on their own initiative.

Tax
Ref: SR14822 to €65,000

Working for a top tier legal firm you will advise on investment projects, finance transactions, M&A and litigation. Ideally you will be a qualified solicitor with 1-3 years pqe with a strong academic background and good corporate/commercial experience.

Corporate/Commercial
Ref: SR12075 to €75,000

A niche law firm are currently looking for a Solicitor with 2-4 years relevant experience to join their commercial and commercial property/banking departments. The ideal candidate will work well on their own initiative as well as part of a successful team. This is an excellent opportunity to join a dynamic and growing Practice.

Insurance
Ref: SR15269 to €75,000

This is an excellent opportunity to join a top tier firm in a specialised role. You will manage structured finance transactions with an insurance aspect, including risk and asset securitisations. You will also supervise junior staff. The ideal candidate will have at least 3 years pqe and have had significant client contact.

Property/Banking
Ref: AW14877 to €50,000

A small to medium sized firm based in the centre of Dublin require a solicitor with 2 years pqe to work in the area of banking law and commercial and residential conveyancing. This is an excellent opportunity to work in an autonomous position and the successful candidate will have the ability and ambition to develop the role. Excellent communication skills are required as well as strong initiative. There is a very attractive remuneration package on offer to candidates of the right calibre.

OVERSEAS

Bermuda- Commercial
Ref: CB15078 to $120,000

This leading Hamilton based firm is looking to recruit a lawyer with 3 years + pqe. You will have worked in a top practice and have the confidence and commercial acumen to advise clients directly with minimal supervision. Your experience should include structured/asset finance and exposure to funds.

Luxembourg- Funds
Ref: CB15082 to €70,000

Our client seeks a qualified solicitor with at least 4 years pqe in securities/banking and general corporate. Candidates from both in-house and private practice backgrounds will be considered. Proficiency in French and ideally another European Language would be advantageous.

London- Corporate Finance
Ref: CB15089 to €70,000

Our client, a well known private practice, is looking to recruit a qualified solicitor with 1-2 years pqe to work in their corporate finance department. The main focus will be on public and private M&A, equity capital markets and general corporate work. You will have experience in a corporate department in a large practice and have very strong communication skills.

For information on these roles please contact Sarah Randall or Allison Watson on 01 6377012 or email sarah@thepanel.com

For information on overseas roles please contact Charlie Blacque on 01 6614774 or email Charlie@thepanel.com

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