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LAW SOCIETY

LAW SOCIETY OF IRELAND

DO YOU FEEL LUCKY?

Practical implications of 'unauthorised but immune' developments

QUEEN MARY

We speak to the retiring, not shy, deputy director general Mary Keane

MULTIPLIER EFFECT

Settling with multiple defendants can mean multiple difficulties

POWER TO THE PEOPLE

The Law Society is to introduce electronic voting for annual Council elections

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LAW SOCIETY

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gazette
LAW SOCIETY

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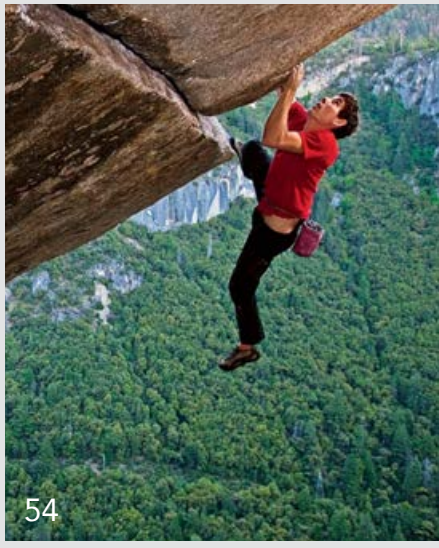
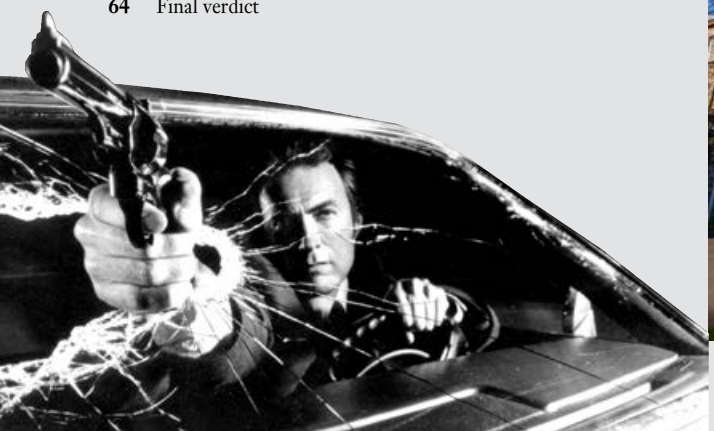
FEATURES

REGULARS





Renaissance period

As spring has moved into summer, it has been great to use the opportunity to meet colleagues around the country in the last couple of months, with many more opportunities arising in the months ahead.

The common theme from the CPD clusters, bar association meetings, and annual dinners has been the pleasure that everyone is taking from meeting up in person again. Along with the joy of seeing colleagues and catching up with old friends, there have been great discussions on a wide range of areas of interest and importance to the profession. I am looking forward to further similar meetings in the coming weeks.

Period of change

You will all be aware of the continuing period of change within the Law Society. As part of that change, some long-serving staff members, including directors, are moving on from the Society. As part of that process, the deputy director general will take early retirement at the end of June.

I know that many solicitors around the country know Mary and will wish her well – as do the many past-presidents who joined our most recent Council meeting, both in person and virtually. I wish to thank Mary for a remarkable term of service – almost 30 years, including the period when she served as the first female director general of the Law Society.

She has been working with me and the new director general, Mark Garrett, during a very positive period of transition. Mary has kept her focus, commitment, and drive right to the end of her time with the Society, and I am very grateful for that support. As many will know, Mary is a true renaissance woman, with many areas of interest and expertise that will be put to good use in the months and years ahead.

Revived initiatives

As part of the revival of pre-COVID initiatives, we are working actively on Ireland for Law – the Government's international legal services strategy, chaired by former Taoiseach John Bruton. The Law Society and the Bar are working very closely with the attorney general, several government departments (Justice and Equality; An Taoiseach; Finance; Public Expenditure and Reform; Business, Enterprise and Innovation; and Foreign Affairs), the IDA, and Enterprise Ireland to promote Irish law and Irish legal services to the international business community.

The inaugural Dublin International Disputes Week that took place in mid-June brought together a wide range of expertise to showcase Ireland as an international leading jurisdiction in dispute resolution. This is part of the ongoing and developing wider strategy. It is a strong and constructive collaborative initiative, which is important for us as the only English-speaking common-law jurisdiction in the EU. More will come of this broad and exciting project.

An ongoing and diverse programme of work is being undertaken by the Law Society Council at present. An area of relevance to members of the profession is the draft new *Solicitors' Accounts Regulations*, which have been prepared by the Regulation of Practice Committee and discussed by the Council. These are being considered by bar associations, with a view to subsequent work being carried out by the Regulation of Practice Committee and Council. We are committed to listening to feedback, while seeking to improve the regulations to enhance the protection of the public and the profession with an appropriately weighted regulatory system.

I wish you all very well in the last court term before summer.

> AN ONGOING AND DIVERSE PROGRAMME OF WORK IS BEING UNDERTAKEN BY THE LAW SOCIETY COUNCIL AT PRESENT

Michelle Ní Longáin

MICHELLE NÍ LONGÁIN,
PRESIDENT

THE BIG PICTURE

ONLY THE BRAVE

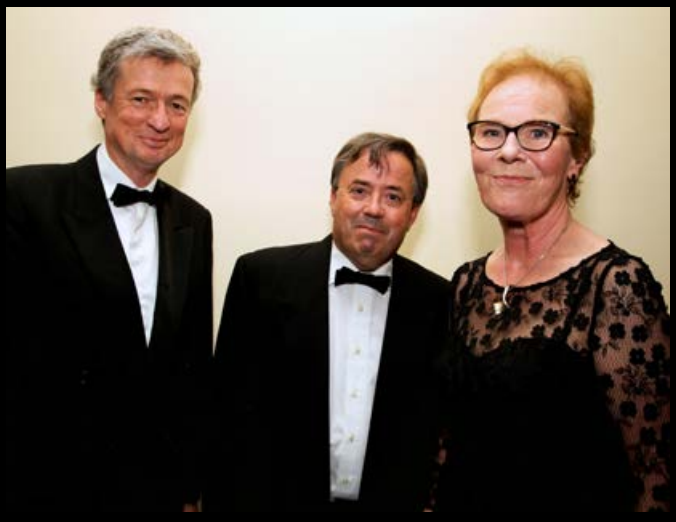
Firefighters face a wall of flames as they try to quell a wildfire in Pumarejo de Tera, near Zamora, northern Spain, on 18 June. Multiple fires have broken out in Spain, one of which ravaged nearly 20,000 hectares of land on the last day of an extreme heatwave that saw temperatures soar to 43°C. On average, temperatures in parts of Spain and France have been more than 10°C higher than normal for June. France recorded its warmest and driest May on record this year

PIC: CESAR MANSO/AFP VIA GETTY IMAGES

Welcome return for Law Society Annual Dinner

ALL PICS: LENSMEN

The Law Society saw the welcome return of the Annual Dinner to Blackhall Place after a hiatus of two years due to the pandemic. Among the guests of honour on 27 May were Minister for Justice Helen McEntee, Minister of State Josepha Madigan, chair of the Joint Oireachtas Committee on Justice and Equality James Lawless, Fianna Fáil spokesperson on justice Jim O'Callaghan, Frances Fitzgerald MEP, Attorney General Paul Gallagher SC, Ukrainian Ambassador to Ireland Larysa Gerasko, Chargé d'Affaires at the British Embassy Catherine Page, Chief Justice Mr Justice Donal O'Donnell, President of the Court of Appeal Mr Justice George Birmingham, and President of the District Court Judge Paul Kelly



Over 1,000 turn out for 'real' Calcutta Run

ALL PICS: JASON CLARKE PHOTOGRAPHY

The 24th Calcutta Run welcomed more than 1,000 participants at Blackhall Place on 28 May. It was 'bye-bye' to virtual and 'hello' real world! The Hope Foundation and Peter McVerry Trust are optimistic that this year's target will be achieved. The Southern Law Association brought the run to Cork on 29 May. Thanks to those who ran, walked or cycled the 5k and 10k routes – and to our tag-rugby and golfing participants

5k winner Katie Nugent

10K winners Siobhan O'Doherty and Jennifer O'Sullivan

'Nets of Wonder' pulls in €7k for IMNDA

At the 'Nets of Wonder' fundraiser for the Irish Motor Neurone Disease Association were Dr Declan MacDaid (IMNDA) and Jerry Twomey

At the Blackhall Place event on 19 May, which raised over €7,000 for IMNDA, were Anne Sherry, Afric Dolomanov and Hugh McGroddy

Attending the 'Nets of Wonder' multi-artist event were Anne Molloy, Mary Lynch and Kay Lynch

The team from Brian J McMullin Solicitors (main sponsor of the 'Nets of Wonder' fundraising event)

Barry Britton and Colm Sands

Sean Perry (MC) and Garrett Harte

ENDANGERED LAWYERS

HAZZA AND RASHED BIN ALI ABU SHURAYDA AL-MARRI, QATAR

PIC: AMNESTY INTERNATIONAL

Lawyers Hazza and Rashed are brothers and members of the Al Murra, a major tribe in Qatar and eastern Saudi Arabia. Members of the Al Murra do not have full citizenship rights in Qatar. In July 2021, the Emir of Qatar ratified a law that provided for the first elections to Qatar's legislative body, and discriminated against members of minorities, including the Al Murra.

Al Murra members protested in Doha in August 2021. Lawyer Hazza bin Ali Abu Shurayda al-Marri took part in the protests and tweeted comments on the situation in Qatar. He was arrested on 10 August 2021. His brother Rashed, also a lawyer, went to the public prosecutor's offices to enquire about Hazza and was promptly arrested. The brothers were held in solitary confinement in a state detention facility. The court appointed a defence lawyer, depriving them of their choice. The trial was held behind closed doors on dates between January and May 2022. On 10 May, both were sentenced to life imprisonment.

It is reported that they were convicted on charges including "resorting to threats and other illegal means to compel the Emir to perform work within his legal jurisdiction", "spreading false and malicious rumours and news at home and abroad with the intent of harming national interests", "promoting, broadcasting and disseminating, through information technology means, incorrect news with the intent of endangering the safety of the state and its public order", "stirring up public opinion and compromising the state's social order", and "organising a public assembly without a licence".

According to information received, the trial lacked minimum standards for a fair trial and legal procedures. During the closed sessions, the two lawyers did not have any meaningful opportunity to defend themselves. Fair-trial rights denied included the right to get prompt, detailed notice of charges; to have adequate time and facilities to prepare a defence; to examine evidence against and present evidence in favour of a defence; and to have charges determined in open court before an independent, impartial and competent judiciary.

Alma Clissmann is a member of the Human Rights Committee.

'Shake-up in make-up' the goal – minister

Justice Minister Helen McEntee: 'More people should see themselves reflected on the bench'

The Judicial Council has played a crucial role in maintaining public confidence in the judiciary, Justice Minister Helen McEntee told the Law Society's Annual Dinner on 27 May.

She added that the *Judicial Appointments Commission Bill* would further strengthen confidence: "Every single person who goes for appointment will have to go through the same process, irrespective of their background or which position they are going for."

Diversity would be a particular focus in choosing candidates, she continued, as would continuous education and an interviewing process. More people should see themselves reflected on the bench: "That's a very clear ambition and intention of the overall bill."

Resources were a key aspect of easier and more efficient access to justice, she added. This was particularly the case when it came to judges, where expansion in numbers was required. The minister said that the Judicial Planning Working Group was examining resources, and benchmarking those against international comparators. After this process, she would speak to the Minister for Public Expenditure about the additional resources required.

"I'm very conscious that this is something we need to do," she said, adding that there was still much work to do, despite the six High Court judges already added.

Warmly welcoming the guests, Law Society President Michelle Ní Longáin said that it was a pleasure to come together once again after "a very long two years that had had both positives and negatives".

The world was now changing at a very rapid pace, she added, but the legal profession was changing with the same speed. Recent initiatives to reduce barriers of access to the legal profession offered evidence of a healthy training market and a healthy legal sector, she said. Supports for Society members, including psychological services (see p30) were provided with the aim of supporting safe workplaces for everyone in the profession, the president concluded.

Courts article wins JMA gong

● The overall winners of the Justice Media Awards 2022 are Mary Carolan and Simon Carswell for their *Irish Times* article, 'Inside the District Courts'.

This year's winning entry was earmarked as an excellent piece of journalism by the judges in the 'Print and online daily journalism' category. The awards were announced at Blackhall Place on 21 June.

Highlighting ongoing issues within the Courts Service, the judges said that the *Irish Times* article offered unique insights and access to the judiciary.

Announcing the winners of the 2022 awards, Law Society President Michelle Ní Longáin said that accurate and timely journalism had never been so important in Ireland: "We have a long history of championing the highest standards of legal journalism, and we are grateful to celebrate excellence in Irish journalism again this year."

2022 saw a record 277 entries across 15 award categories, which included two new sectors – podcasts, and environmental/climate-justice reporting. Full report and photos in the Aug/Sept *Gazette*.

DPP seeks Lynn retrial

● The retrial of former solicitor Michael Lynn, who is accused of stealing millions of euros from several financial institutions, has been set down for October 2023, *writes Isabel Hayes (court reporter with CCC Nuacht Teoranta)*.

The jury in his four-month trial in the Dublin Circuit Criminal Court this year failed to reach a verdict after 12 hours of deliberating, and was discharged earlier this month.

On 20 June, John Berry BL, prosecuting, told the court that the DPP was seeking a retrial and that the prosecution wished to "make certain enquiries" because of some assertions Mr Lynn had made during the trial. He said it was anticipated that the trial would take ten weeks.

IRISH RULE OF LAW INTERNATIONAL

COMMERCIAL LAW IN SOUTH AFRICA

● On five consecutive Tuesday mornings starting in March, Irish Rule of Law International conducted an online commercial law course for South African legal practitioners from historically disadvantaged backgrounds. The course was run in partnership with the Law Society of South Africa (LSSA), the Dublin office of Matheson, and the Johannesburg office of Cliffe Dekker Hofmeyr.

Since 2001, IRLI has been involved in the provision of such courses, but this was the first one conducted online, becoming necessary because of travel difficulties due to COVID. Previous courses (at least one a year between 2001 and 2019) had all taken place in person, with Irish lawyers travelling to South Africa.

The course was part of a programme that originally arose out of discussions between the LSSA and the Law Society of Ireland in 2000/01 as to how lawyers from Ireland could assist in the development of the legal profession in South Africa. There was little opportunity for lawyers from historically disadvantaged backgrounds to become commercial legal practitioners, as this area was (and still is) largely controlled by predominantly white law firms in South Africa.

While this year's course covered a variety of issues, its primary focus was on the drafting of documents, which the LSSA feels is a skill to which South African lawyers from disadvantaged backgrounds do not have ready access. Lawyers from Matheson and Cliffe Dekker Hofmeyr were the principal contributors to the course, but there were also contributions from former South African judge Ismail Hussain and from Mr Justice David Barniville.

Some 70 to 80 lawyers from all over South Africa took part. Having the course online undoubtedly made participation easier. On the basis of the subsequent feedback, the course seems to have been very well received.

Our sincere thanks to all the lawyers (from Ireland and South Africa) who took time out of their practices to lecture, train, and share their experiences and knowledge.

IRLI is very much indebted to the many people in Matheson and Cliffe Dekker Hofmeyr (both lawyers and support staff) for all their work in making this experimental online course such a success.

Irish Rule of Law International and Matheson.

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Táille an chúrsa | Course fee | €1,050
Sprioclá d'iarratais | Dé hAoine an 23 Meán Fómhair 2022
Deadline for applications | Friday 23 September 2022

Cuireann an Roinn Turasóireachta, Cultúir, Ealaíon, Gaeltachta, Spóirt agus Meán tacaíocht ar fáil don chúrsa seo. This course is supported by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.

Tuilleadh eolais | More information:
Dáithí Mac Cárthaigh BL
dmaccarthaigh@kingsinns.ie
+353 (0)87 236 83 64

Open day showcases services

At the open day *(front, l to r)*: Pamela Connolly (regulation), Michelle Nolan (RMS), Mark Garrett (director general), Teri Kelly (director, RMS), Miriam Taber (PR), and Anne Burke (education); *(back, l to r)*: Shane Farrell (RMS), Frank McNamara (Younger Members Committee), Mairéad O'Sullivan (library), Siobhan Masterson (PR), Deirdre Nugent (RMS), and Philomena Whyte (admissions)

● PPC2 trainees attended an 'open day' on 26 May that showcased the supports available to them when they become newly qualified solicitors, *reports Michelle Nolan*.

This was the first such on-site event post-pandemic, and teams from every department were on hand to answer questions about Law Society supports, services, processes and procedures. The goal was to promote an easy transition for newly qualified solicitors from the Law School to the Law Society.

The event ran simultaneously in the Presidents' Hall and the Education Centre's main lecture theatre.

The open day ended with a panel discussion hosted by the Psychological Services team.

PPC2 trainees are welcome to contact Michelle Nolan (head of member services) at memberservices@lawsociety.ie with any queries about the many supports available to them on qualification.

New High Court President named

● Mr Justice David Barniville is to be the next President of the High Court, after Ms Justice Mary Irvine retires in July. He is currently a judge of the Court of Appeal. A former barrister, he served as chair of the Bar Council.

The Government is also to nominate solicitor Eileen Roberts for appointment as a judge of the High Court. She will fill the vacancy left by the nomination of Mr Justice Senan Allen to the Court of Appeal last April.

Bill sets new rules for retaining communications data

● The Justice Minister has published the general scheme of a bill that changes the current law on the retention of data for national-security purposes. The bill aims to address recent judgments from the CJEU.

In a case taken by convicted murderer Graham Dwyer, the CJEU ruled that EU law precluded the general and indiscriminate retention of electronic traffic and location data for the purposes of combating serious crime.

The *Communications (Retention of Data) (Amendment) Bill 2022* will allow for the general and indiscriminate retention of communications traffic and location data only on national-security grounds, where approved by a designated judge.

The bill also sets up a system of preservation orders and production orders. These will facilitate the preservation of, and access to, specified data held by service providers for both national security and for the investigation of serious crime, where permitted by an authorising judge.

A preservation order will act as a 'quick freeze', requiring service providers to retain any specified data they hold at a particular point in time for a period.

A production order will allow access to specified data held by a service provider for commercial or other reasons, where such access is necessary for national-security or law-enforcement purposes.

Six solicitors named SCs

The Government has approved the granting of patents of precedence and the title of senior counsel to six solicitors and 28 barristers. For the first time, the number of women solicitors nominated outnumbers men.

Solicitors **– Aisling Gannon (Eversheds Sutherland), Sinéad Kearney (ByrneWallace), Helen Kelly (Matheson), Terence McCrann (McCann FitzGerald), Alastair Purdy (Alastair Purdy and Co), and Deborah Spence (consultant).**

Barristers **– Sara Antoniotti, Garrett Baker, Garvan Corkery, Daniel Cronin, Elva Duffy, Nuala Egan, Mellissa English, Moira Flahive, Glen Gibbons, Michael Hourican, Jane Hyland, Reg Jackson, Joe Jeffers, David Leahy, Lorna Lynch, Padraic Lyons, Tony McGillicuddy, Imogen McGrath, Sinead McGrath, Mairead McKenna, Gerard Meehan, Jennifer O'Connell, Michael O'Connor, Leesha O'Driscoll, Bairbre O'Neill, Ailbhe O'Neill, Fiona O'Sullivan, and Gerardine Small.**

Storming return to streets for Run

The Calcutta Run – The Legal Fundraiser made a storming return to the streets of Dublin on 28 May, having spent two years in the virtual wilderness.

A total of 1,000 participants lined up outside Blackhall Place for the start of the 24th Run. Managing the entire affair was an army of 200 volunteers, charity partners, sponsors, and the fine people from Fitzers Catering, who took control of the Finish Line Festival, manning the barbecue and bar. Coffee and cakes were supplied by our new friends from Hustle and Flow.

Getting everyone pumped up and in the mood were stalwart MC Gavin Duffy and the One Escape Gym team, who helped put a pep in everyone's step.

Calcutta Run ambassador and blind ultrarunner Sinead Kane started the event with a bang – she was holding the starting gun – and quickly joined the field in the company of her guide runner. The race meandered through Dublin 7 to the Phoenix Park and back, with all participants, accompanying children, and four-legged friends doing themselves proud.

For the first time, the Calcutta Run was supported by two satellite events – a tag-rugby fundraiser and a golf-classic tournament – which look set to become permanent fixtures in the future.

The Calcutta Run also travelled to Cork on 29 May, supported by the efforts of the Southern Law Association. The Blackrock venue attracted a large crowd for a fun family day out, with proceeds going to The Hope Foundation and SHARE Cork (which provides accommodation, medical and social-support services for the elderly).

The organisers wish to thank everyone who participated, and especially acknowledge sponsors Behan & Associates, DX Delivery, Iconic Health Clubs, Independent College Dublin, Kefron, Law Society of Ireland, Leap Software, and The Panel.

It's still not too late to make a donation at www.calcuttarun.com, or you can scan the Calcutta Run QR code in the advert on p60 of this *Gazette*. All proceeds go towards projects run by the Peter McVerry Trust and The Hope Foundation, which support those experiencing homelessness in Ireland and Kolkata.

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

Avoiding the elevator

Q I am a public-sector lawyer with several years of experience, who never experienced social anxiety until returning to the office after COVID. Before that, I had no problem leading meetings and managing multiple client caseloads, but now I find myself feeling anxious before attending an in-person meeting. I feel it is difficult to establish a routine with hybrid working arrangements and have been withdrawing from some of my usual activities. I don't feel that I have enough energy anymore, and I worry that my colleagues are disappointed in me for not making more of an effort to be part of team social events.

A To understand why anxiety might emerge now in your professional life, I want to first draw your attention to the number of skills and processes that it actually takes to do your job effectively. The feeling of competence in one's work arises after years of training and observing; years of gathering information to refine your judgement and endless hours of monitoring patterns of other peoples' behaviour; becoming familiar with professional etiquette, and learning a set of pre-determined assumptions and rules for what is expected and accepted in the environment that you have chosen to be in.

Over time, you become so good at this that your senses and judgements operate without much effort at all – that is the feeling of competency. But a critical component is this: everything that you grew competent at navigating was honed in the context of an environment that had very defined parameters – up until the last two years.

When those parameters fell away, all of us lost the ability to predict outcomes, not just professionally, but also outcomes in terms of how other people behave, respond, and communicate in contexts that no longer necessarily have a clear set of predictable outcomes. Boundaries have dissolved, with personal lives creeping into the professional world and the professional persona perhaps becoming diluted.

Essentially, the ground has moved. And when the ground we are standing on shifts, we no longer feel so sure of our footing. Social and professional situations feel a lot more challenging to predict. And the result? Against a backdrop of unpredictability, we may find that our levels of anxiety rise. And when anxiety levels rise, one way of coping is to keep avoiding the scenario that triggers the rush of anxious discomfort.

Here's the thing, let me tell you how to hold on to a fear of elevators. You keep avoiding the elevator.

The challenge I have for you is this. First, reflect on what matters to you. Perhaps it's that you want more social drive, and you want to feel more confident with in-person meetings.

Now, with that in mind, let me ask you this – are you prepared to practise getting comfortable with being uncomfortable? In order to do your job effectively and strengthen your relationships, can you be prepared, willing even, to experience feelings of discomfort in your body? Despite this discomfort, which you acknowledge but don't try to change or avoid, can you go ahead and do what matters to you anyway?

To help, here's a tip: make your exhales longer than your inhales. This tells your body you are 'safe'. This, in turn, allows your nervous system to regulate and for you to make a clear conscious and rational choice to do what matters to you, despite discomfort. g

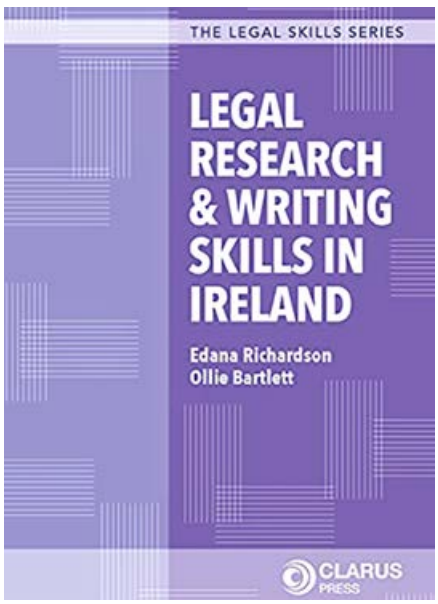
To submit an issue that you'd like to see addressed in this column, email professionalwellbeing@lawsociety.ie. Confidentiality is guaranteed.

This question and answer are hypothetical and were written by Louize Carroll, a consultant psychologist and co-founder and director of PRISM Therapy Online (prismtherapyonline.com). Any response or advice provided is not intended to replace or substitute for any professional psychological, financial, medical, legal, or other professional advice.

LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day: Freephone 1800 814 177.

Legal Research and Writing Skills in Ireland

Dr Edana Richardson and Dr Ollie Bartlett. Clarus Press (2021), www.claruspress.ie. Price: €25 (incl VAT).



This compact 180-page book says everything you really already know as a working lawyer, and a lot more that you may have wondered about but didn't know where to turn. For a student or junior lawyer, it is even better – it will save a whole period of trying to figure out how to approach researching and writing on legal topics, and give you the encouragement and confidence to start – and then to keep improving.

Written by two academics in Maynooth, it is primarily designed for students. It models its own advice about structure, being arranged in three parts (the research process, the writing process, and legal research and writing in specific situations). Within these parts, it gives chapter overviews, discusses related topics under clear headings, and finishes with a summary of each chapter. It is a model of accessibility.

It contains much useful advice and guidance – for example, on the relative authority of primary and secondary sources, and how to cite them. But, most usefully, it explains the rationale involved in many conventions and practices, so that the reader can understand the logic of the approach and remember it. For example, it explains the benefit of background reading before developing a research plan, why you should keep track of your sources as you work and refine your research, why it is advisable to make a research plan (using it as a basis for change as necessary), and why keeping notes of your reading is useful – and how to keep notes.

Part 2, on the writing process, contains some very satisfying pages on spelling, grammar, punctuation and other elements of writing. This is followed by an interesting chapter on writing to make the right impact. It explains why plain language is best, and why you should consider who you are writing for – your reader, of course, not yourself. It is a pleasure to read the analysis of the active and passive voices and their different uses. There is an efficient guide to the advantages of headings, good formatting, dates and page numbers – hardly noticed in their place, but unhappily noticed in their absence or incorrect application. And it explains the hugely important benefits of proofreading your work.

The section on the rules for the citation of cases, articles, books, and other authorities will be useful for reference, and there is excellent advice on tracking all authorities as you go along – not leaving references and bibliography to the end.

In the section on writing for specific situations, there is an interesting explanation of the different approaches implied by the words 'analyse', 'contrast', 'describe', 'discuss', 'evaluate', 'examine' and 'synthesise', and what is expected by teachers and examiners using those words in questions and assignments. There is good advice on how to approach problem-style questions. Writing for other academic and professional purposes is also explored.

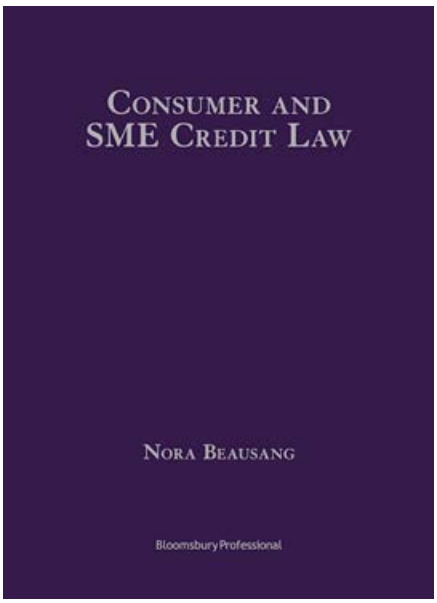
None of this is original, exciting, or glamorous in itself, but it will help you achieve a workmanlike, well-presented piece of work that is easy to read and be referred to in its own right, like this little book.

Read it, then leave it lying around and dip into it periodically – it will inspire and encourage you.

Alma Clissmann is Access to Legislation Manager at the Law Reform Commission.

Consumer and SME Credit Law

Nora Beausang. Bloomsbury Professional (2021), www.bloomsburyprofessional.com/ie. Price: €325 (incl VAT).



This dedicated consumer protection and SME credit-law text is an excellent resource, and is a welcome addition to banking-law publications. Its 2,560 pages cover legislation, Irish and European case law, and codes of conduct.

It starts by covering consumer legislation, including the Irish and European acts and regulations. It contains a dedicated chapter on the *Code of Conduct on Mortgage Arrears* and contains very detailed chapters on the *Consumer Protection Code*.

For those advising the SME sector, the chapter on the regulation of business lending will be very useful. The *Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-sized Enterprises) Regulations 2015* and the regulations governing SME credit are covered in great detail. There is also a short section dealing with the exceptional COVID-19-related financial supports. The text deals in detail with arrears and borrowers in financial difficulties, as well as complaints and the Credit Review Office.

There is a detailed chapter covering the Financial Services and Pensions Ombudsman.

Another useful chapter deals with redress on regulatory breaches and the enforceability of contracts affected by illegality. It covers redress under the *Central Bank (Supervision and Enforcement) Act 2013* and the principles for redress issued by the Central Bank. It includes a detailed review of, and commentary on, the current relevant case law up to 1 July 2021, including *Irish Life and Permanent Plc v Dunne*, *Bank of Ireland v Quinn*, *Ryan v Leonard*, and *Quinn v Irish Bank Resolution Corporation Ltd (in Special Liquidation) & ors*.

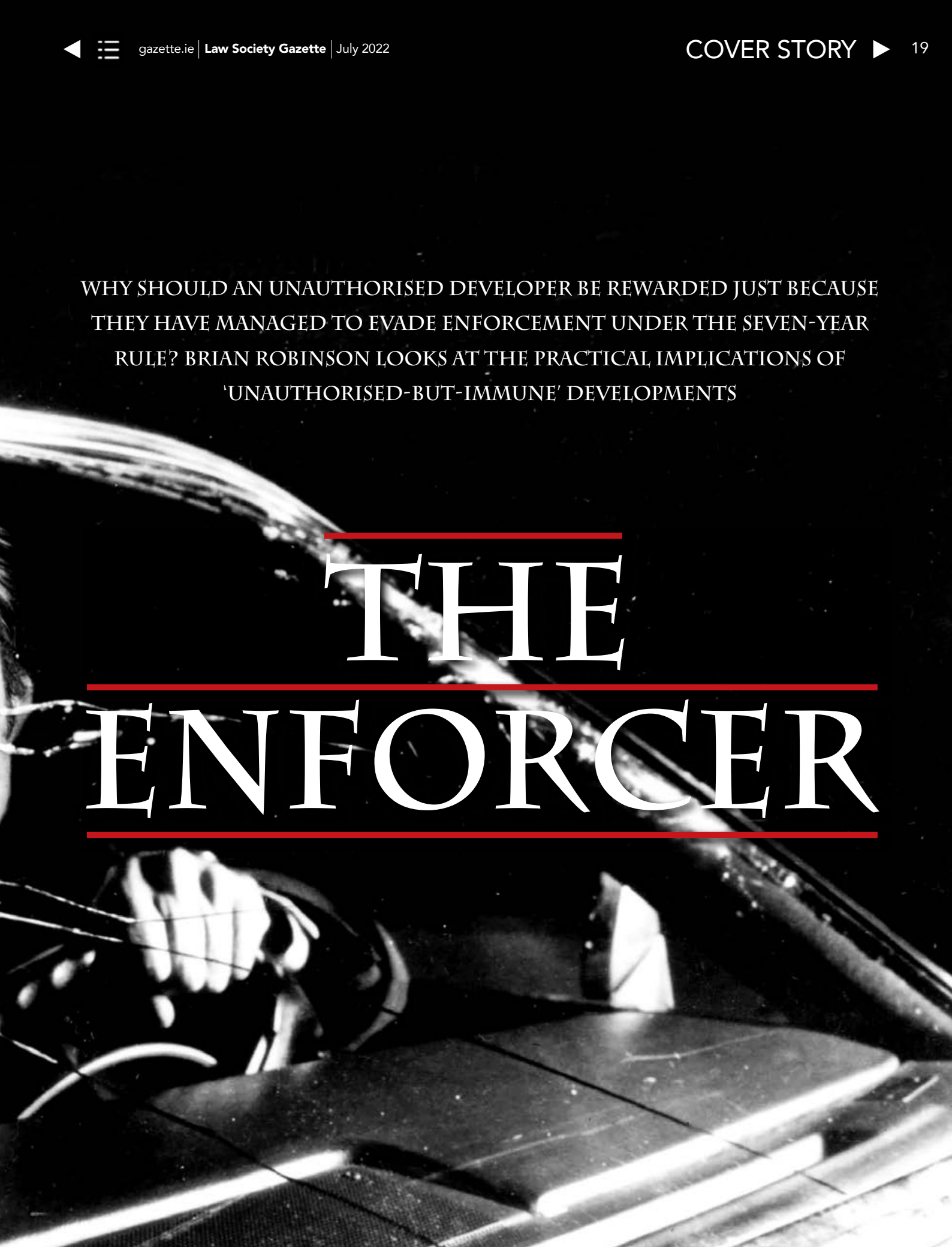
This is an ideal resource for practitioners advising consumers and SME-sector clients.

Michelle McLoughlin is principal of M McLoughlin & Co, Solicitors, Co Sligo.

PIC: ALAMY

WHY SHOULD AN UNAUTHORISED DEVELOPER BE REWARDED JUST BECAUSE THEY HAVE MANAGED TO EVADE ENFORCEMENT UNDER THE SEVEN-YEAR RULE? BRIAN ROBINSON LOOKS AT THE PRACTICAL IMPLICATIONS OF 'UNAUTHORISED-BUT-IMMUNE' DEVELOPMENTS

THE ENFORCER



In the November 2021 *Gazette*, we looked at the statutory limitation period for planning enforcement in sections 157(4) and 160(6) of the *Planning and Development Act 2000*, known as the seven-year rule. We discussed how that rule and limitation period has been extended through case law and legislative enactment and, in some cases, abolished completely.

Successfully arguing that the seven-year rule stops enforcement action in its tracks does not regularise the development in question. It is termed 'unauthorised but immune'. The development is still unlawful. While no enforcement action can be taken, practitioners should be aware that there are still serious consequences for a development that has the status of being unauthorised but immune.

The relevant periods under the seven-year rule are seven years and 119 days for unauthorised development *simpliciter*, and 12 years and 164 days where a standard five-year planning permission has been granted, but not complied with.

Sudden impact

Unauthorised-but-immune status can also arise pursuant to court order. A court might find, in the context of a section 160 action, that a particular development is unauthorised, but decides to exercise its discretion not to order its demolition, removal, or cessation. Howsoever arising, the practical consequences for an unauthorised development that is immune from enforcement action include the following:

1) Such a development is not entitled to benefit from the exempted development provisions of the *Planning and Development Regulations*. The relevant provisions are article 9(1)(a)(viii) for unauthorised structures and article 10 for an unauthorised use. This is a substantial restriction.

A practical example includes your standard 40-square-metre extension to the rear of a house. In the normal run of events, such an extension is exempt from planning if within the limitations of class 1 of part 1 of schedule 2 of the regulations. If such an extension is to an unauthorised dwellinghouse, the extension itself is also unauthorised and liable to enforcement.

This also applies where planning permission exists, but has not been complied with, either in full or in part. An example here is a permission for a house where substantial enough conditions have not been complied with, or perhaps financial contributions have not been paid in compliance with a condition attaching to the permission. Having regard to substantial compliance, *de minimis* rules, and proportionality, a normally exempt extension could be deemed unauthorised, depending on the extent of non-compliant conditions. To make the extension planning-compliant would require the outstanding conditions to be complied with or the financial contributions to be discharged that had initially become immune from payment.

Where an unauthorised use is being carried out, it is not permitted to change use to an otherwise exempted use under part 4 of schedule 2 of the regulations. A practical example of this would be a change of use from one shop use to another shop, which does not contravene a condition in a planning permission, and otherwise complies with the regulations. If the initial shop use is unauthorised in the first instance, a normally exempted change of use under part 4 is not permitted.

2) It is also likely that the statutory exemption allowed for under section 4(1)(h) of the 2000 act does not apply to unauthorised development either. Section 4(1)(h) allows for, among other things, repairs and maintenance without the necessity for planning permission. While there is no specific authority on the point,

the cases of *Fingal County Council v Crean and Signways Holdings Limited* (2001), *Sligo County Council v Martin* (2007), *Cork County Council v Slattery Pre-Cast Concrete Limited* (2008), and *Cronin (Readymix Limited) v An Bord Pleanála* (2017) all indicate that an unauthorised-but-immune development cannot avail of this exemption.

A practical example would be repairs to the roof of an unauthorised dwellinghouse. Normally, such works would be exempt under section 4(1)(h). However, if the house itself is unauthorised, any repair works thereto are, in all likelihood, unauthorised as well.

3) Practitioners should also be aware of the distinction between works and use. A structure may have become unauthorised but immune, but the actual use of the structure may not commence until some time later. It may then be possible to maintain and take enforcement action against the material change of use, as they are two separate and distinct developments. The decision of Clarke J in *Cork County Council v Slattery Pre-Cast Concrete Limited* is authority for this position.

4) Unauthorised status also impacts on other rights and entitlements under different statutory codes or regimes. If a particular statutory regime requires compliance with the planning laws, unauthorised but immune does not equate to planning compliance.

Terry v Stokes (1993) shows that benefits under the landlord-and-tenant legislation do not apply when dealing with an unauthorised, albeit immune, structure. In *Stokes*, the landlord respondent was refused statutory relief where the premises in question comprised unauthorised but immune development.

In *Dunnes Stores v Dublin City Council* (2017), the applicant sought a licence from the respondent council for street furniture. A condition of the licence was that awnings were

> SUCCESSFULLY ARGUING THAT THE SEVEN-YEAR RULE STOPS ENFORCEMENT ACTION IN ITS TRACKS DOES NOT REGULARISE THE DEVELOPMENT IN QUESTION

PIC: ALAMY

to have planning permission. No planning permission existed, but the awnings were immune from enforcement. The court found that, in the absence of an actual grant of planning permission, unauthorised but immune was not the same thing, and this precluded the granting of the licence.

In *O'Connor v Nenagh UDC* (1996), Geoghegan J suggested, *obiter*, that an unauthorised-but-immune development would preclude an applicant for a liquor licence from being entitled to hold such licence where the building was not planning-compliant.

If applying for a waste authorisation (licence, permit or certificate of registration), any facility will need to be planning compliant. Put simply, unauthorised-but-immune development is not planning compliant if it might have an impact on any waste-authorisation application.

Accordingly, you cannot avail of benefits afforded under other statutory provisions where planning permission is required but a development is unauthorised but immune. There are knock-on consequences for other statutory entitlements.

5) There can also be problems when it comes to compensation. For example, section 190 of the *Planning and Development Act 2000* allows for compensation to be paid in certain circumstances. However, this is nullified by section 191(4) of the act, which says: "Compensation under section 190 shall not be payable in respect of the refusal of permission, or of the imposition of conditions on the granting of permission, for the retention on land of any unauthorised structures."

A similar position applies to compulsory purchase orders. Paragraph 2(b)(v) of the second schedule to the act states that, in determining values: "No account shall be taken of … any value attributable to any unauthorised structure or unauthorised use." It is arguable that the arbitrator should treat the lands as if the use was never carried out, or the structures were never on the lands, and value accordingly.

From a practical point of view, if a client bought a building that was unauthorised but immune, and was later CPO'd, they could end up getting agricultural value for it. No doubt they would be asking questions subsequently, if not advised in advance.

6) Importantly for practitioners, there are serious consequences for title purposes. If purchasing an unauthorised-but-immune development, title must be qualified with any lending institution. While there is no statutory definition of a good marketable title, planning is a fundamental part of the title to any property.

Acceptance of this qualification on title by the bank or lender should not be taken for granted. Care has to be exercised. It may not be good enough to obtain a declaration to the effect that the development has been in place for in excess of seven years and 119 days, or 12 years and 164 days, whichever the case may be, and that no notices have been served. A lender will want to know the commercial consequences of such a status. There will be possible difficulties regarding any future sale of the property. The unauthorised status will affect the ability to sell on and also affect the possible resale value. It restricts any further extensions, additions, or alterations. There are likely to be restrictions on the pool of possible future purchasers. If qualifications on title are not being accepted, it may be that only cash buyers will be in a position to purchase a particular unauthorised property. Any potential purchasers should be advised of these difficulties.

> WHILE NO ENFORCEMENT ACTION CAN BE TAKEN, PRACTITIONERS SHOULD BE AWARE THAT THERE ARE STILL SERIOUS CONSEQUENCES FOR A DEVELOPMENT THAT HAS THE STATUS OF BEING UNAUTHORISED BUT IMMUNE

7) There may also be difficulties in obtaining planning permission into the future. This relates not only to the particular development in question, but also to other developments by the same developer.

Consolidation of unauthorised development can often be cited as a reason for refusal of a planning application with respect to further development. An existing unauthorised development, even though immune from enforcement, can have an impact on applications for other developments on the same site.

Another possibility is that a local authority could insert a condition into a grant of permission that any existing unauthorised development, even though immune from enforcement, be removed or cease, as the case may be.

Section 35 of the act also allows a planning authority to consider previous planning transgressions. This procedure is primarily aimed at rogue developers or serial unauthorised developers. However, if the planning authority is of the view that there is a real and substantial risk that the development for which planning is sought would not be completed in accordance with a permission if granted, or any conditions attaching thereto, they can decline to consider the application. Section 35 can apply not only to applications for permission on lands where previous unauthorised development has been carried out, but it is quite possible that an unauthorised-but-immune development at one end of the country could be used to justify a notice under section 35 regarding an application by the same developer for planning at the opposite end of the country.

Accordingly, the existence of an unauthorised-but-immune development can clearly have an impact on other developments for which permission is being sought, whether on the same site or elsewhere.

8) Finally, it should be noted that section 46 of the *Planning and Development Act 2000* contains a truly remarkable power that effectively enables a local authority to serve notice requiring that any particular structure be demolished, removed, altered, or replaced; any use discontinued; or conditions imposed on the continuance of a use, in exceptional circumstances. This is whether the development in question is authorised or not.

Section 46(2) specifically envisages application of the section to unauthorised-but-immune developments, stating that the section does not apply to unauthorised development of less than seven years. Obviously, if the unauthorised development is in place less than seven years, enforcement proceeds by way of section 160 injunction.

Even if a development is unauthorised but immune, there is still a mechanism under section 46 whereby such development can be stopped, removed, discontinued, or whatever the case may be. Section 46 is far more likely to be invoked with respect to an unauthorised development, as opposed to an authorised development.

Magnum force

The general obligation to obtain planning permission is set out in section 32 of the *Planning and Development Act 2000*. Permission is required for any development of land that is not exempted development, and for retention of unauthorised development. Those who comply with the law, obtain planning permission, and comply with it obtain legal entitlements and practical benefits that flow from compliance with the law. Those that do not so comply cannot avail of such consequent entitlements and benefits.

In practice, conveyancers, when presented with an unauthorised development, may accept the simple declaration referred to above. Such a declaration should not be taken without question, and appropriate enquires should be carried out. It should also be noted that, usually, this is a declaration from a private individual. There is no professional indemnity insurance backing it up. If it is incorrect, it may not be worth the paper it is written on.

While section 6 of the *Criminal Justice (Perjury and Related Offences) Act 2021* makes it a criminal offence to knowingly make a false statutory declaration, this will be of little use or comfort to a client that has bought an unauthorised development in reliance on a declaration, if this is subsequently the subject matter of enforcement proceedings by a local authority that are, in fact, within time. A purchaser of an unauthorised development is not 'home-and-hosed' just because a vendor provides such a declaration and the bank accepts it as a qualification on title. There are also the serious practical consequences as detailed above, which should be advised to clients.

The dead pool

It has been argued that unauthorised-but-immune developments should be treated as existing or established developments – and not tagged with an unauthorised status with resultant difficulties. It is also argued that there are constitutional issues due to an alleged disproportionate interference in constitutionally protected property rights. However, it is clear that the courts do not take that view, and that such developments are still treated and regarded as being illegal.

Perhaps this is due to the provisions of section 151, whereby an ongoing criminal offence is being committed. Perhaps it is due to the fact that members of the public have been disenfranchised from participating in their democratic and statutorily prescribed right of participation in the planning process. Perhaps it is due to the huge public and community interest in protecting the environment and the integrity and efficacy of planning-law enforcement. Or perhaps it is simply that the development should not have been carried out in the first place.

Why we have planning laws and the importance of enforcement was considered in *Wicklow County Council v Kinsella* (2015) and, more recently, in *Meath County Council v Murray* (2017). There is also a general rule of law that one cannot benefit from illegal behaviour or activity.

There is a positive statutory obligation on all citizens to apply for planning permission for development that is not otherwise exempted development. If everybody else has to do it, why should the unauthorised developer be rewarded for not complying with the law and have the same benefits and legal rights as others, just because he or she has managed to evade enforcement under the seven-year rule? Perhaps being permitted to keep the unauthorised structure or to continue the unauthorised use is enough. Arising from that, there are serious consequences and restrictions that follow. g

Brian Robinson is managing partner at Benville Robinson LLP, Solicitors, Bray, Co Wicklow.

LOOK IT UP

CASES:

- *Cork County Council v Slattery Pre-Cast Concrete Limited* [2008] IEHC 291
- *Cronin (Readymix Limited) v An Bord Pleanála* [2017] IESC 36
- *Dunnes Stores v Dublin City Council* [2017] IEHC 148
- *Fingal County Council v Crean and Signways Holdings Limited* [2001] IEHC 148
- *Meath County Council v Murray* [2017] IESC 25
- *O'Connor v Nenagh UDC* [1996] IEHC
- *Sligo County Council v Martin* [2007] IEHC 178
- *Terry v Stokes* [1993] 1 IR 204
- *Wicklow County Council v Kinsella* [2015] IEHC 229

LEGISLATION:

- *Criminal Justice (Perjury and Related Offences) Act 2021*
- *Planning and Development Act 2000*
- *Planning and Development Regulations 2001-2022*

NEARLY 30 YEARS AFTER SHE FIRST WALKED INTO BLACKHALL PLACE, DEPUTY DIRECTOR GENERAL MARY KEANE WALKED OUT FOR THE LAST TIME AT THE END OF JUNE. STUART GILHOOLY TALKS TO HER ABOUT HER LAW SOCIETY LEGACY, HER STINT AS DG, AND HER RETIREMENT PROJECTS

PROUD MARY

ALL PICS: CIAN REDMOND

She puts on her hard hat and walks into the courtyard. The scaffolding winds around three sides of the tower. It's been a long time, but it's finally coming together. This is her legacy. Not the Law Society, not 30 years

Fergal O'Brien, Jake Nangle, Mary Keane, James Doyle, Jim Dunbar and Benny Byrne

of grind and being Ken Murphy's 'partner in crime'. Not the ten months when she reluctantly took on his mantle while the world figured out a way to live differently.

They all mattered and are part of her story, but this is where her heart is. If an Englishman's home is his castle, then this Mayo-woman's castle is her home. And she's coming home. For good. Nearly 30 years after she first walked in the door at Blackhall Place, Mary Keane walked out for the last time, on 30 June 2022.

For most of that time, she was the yin to Ken Murphy's yang. A double act that was often compared to an old married couple – but that would do both of them a disservice. They discovered each other's strengths and found they were complementary. For 26 years they soldiered together and then, in March 2021, Ken suddenly left the band.

> IF AN ENGLISHMAN'S HOME IS HIS CASTLE, THEN THIS MAYO-WOMAN'S CASTLE IS HER HOME. AND SHE'S COMING HOME. FOR GOOD. NEARLY 30 YEARS AFTER SHE FIRST WALKED IN THE DOOR AT BLACKHALL PLACE, MARY KEANE WALKED OUT FOR THE LAST TIME, ON 30 JUNE 2022

It shouldn't have been a surprise, as this coincided with his 65th birthday, but most people assumed he would extend until a replacement was found. So, like Hemingway's fictional bankruptcy, he was going gradually, then suddenly.

At swim two birds

Mary Keane was catapulted into a job she didn't seek and didn't want. For so long, being the engine powering a well-oiled machine was just fine. A year before her 60th birthday, she was thrust forward, dropped in the ocean and expected to swim.

"Ken had offered to stay until his replacement had been found, and I thought that was the best thing for the Society. As I understand it, no one took him up on that offer. He was then advised that there was no necessity for him to stay and he could retire on his official retirement day.

> "I then got a call to say that he would be leaving in March and that, as I was the deputy director general, who would be better to hold the fort? I did go back a couple of times to say I didn't think it was the right decision for the Society, and that Ken and myself should stay until a new person was found. I made it clear I wouldn't be applying for the position, and I didn't want the position. I was told it would only be for a short period of time, likely to be about three months."

She took on the role – and not only did she swim, she took to it like a duck to water. It turns out that her own doubts were unfounded, but she found it very draining, particularly as she was performing the role of DG and deputy simultaneously.

Lonely station

"It was a difficult time – we were still in COVID and there were all the stresses that go along with that. We also had a relatively new president. Ken had me, but I didn't have a deputy. It's always easier having two people rather than one to address a problem.

"Because of the pandemic, a lot of people weren't around to help with the heavy lifting. It was a fairly lonely station. It was expected to be three months, but it was ultimately ten months. I wasn't privy to the recruitment process, so I didn't have any visibility about when it was likely to end. I was the reluctant DG, no question."

Although she looks back on the time as one of stress and isolation, her performance in a role she didn't want impressed many. Although most engagements were remote, she interacted with many bar associations along with the then president, James Cahill, and starred in an Oireachtas hearing on judicial appointments, reciting the memorable phrase: "Diversity is being invited to the party – inclusion is being asked to dance."

Dance partners

It had been a long journey to this particular party, and she had a few dance partners along the way.

Born in Mayo in 1962 to two schoolteachers, Tom and Mary, she was one of five siblings. Primary school was a two-teacher operation (her parents), and she then followed the path of many middle-class children from the country in those days.

Boarding school in Claremorris was a joy, an opportunity to make friends, which would have been more challenging at home in a remote country area.

Six years later came the inevitable decision about what to do next. Ireland in 1980 was still a long way from the diverse, progressive society of today, and her parents still expected young Mary Keane to do teacher training or enter the bank or the Civil Service.

Trinity seemed a much more interesting option and, after hiding the offers from these other institutions from her parents, she started a degree in English and German, with the intention of being an interpreter. The only downside was not liking the language part of the course.

Ultimately, her parents got their way, and she went to the Civil Service – which she found mind-numbingly boring.

"After two years, I applied for special leave without pay, and did law in UCD."

Upon returning to the Civil Service, she was farmed out to the Companies Office before embarking on the Bar at night, which was completed in 1989.

"I did it with the intention of completing professional training. It wasn't possible to go to the Law Society full-time because I couldn't afford it. The Bar was part-time, so I could continue at the Civil Service."

Tunnelling out

An enticing ad in 1990 persuaded her that a career in Craig Gardner might fulfil her ambitions, but two years in the tax department didn't tick the boxes. "I had a bellyful of exams by then. I spent two years avoiding the AITI exams while tunnelling out of Craig Gardner."

After successfully performing an impression of Andy Dufresne in *The Shawshank Redemption*, an ad in the newspaper caught her attention: the Law Society was looking for an administrative assistant (legal) to then director general Noel Ryan. Experience in the Civil Service was deemed to be an advantage. Right up her street. It was the start of a Law Society career that would end at the top of the pyramid.

SHE GOT THINGS DONE – IT WAS HER SIGNATURE. THOSE OF US WHO WORKED WITH HER ON THE COORDINATION COMMITTEE WILL HAVE RECURRING NIGHTMARES OF THE FAMOUS 'TO-DO LISTS'

It was a steep learning curve and, before Ken Murphy came rolling in, Noel Ryan showed her the ropes.

"I was Noel Ryan's sidekick. He was a very hard taskmaster, but an amazing mentor. I learned more from him in the years I worked with him than in any subsequent or prior two-year period."

When she joined, the Law Society was a small organisation, with about 53 employees, but "we were hard working and very focused on policy".

Taking shape

Within six months, she was the policy development executive, but it was with Ken Murphy's arrival, two years later, that her career took shape. Was there much difference between the approaches of the two DGs?

"Ken was a solicitor, Noel wasn't. He was a civil servant by way of background. Ken was good in relation to PR, and was always open to recognising other people's abilities. He wouldn't 'correct my homework' as much as Noel would have done."

In 1996, she was promoted to director of policy, which expanded to policy, communication and member services a year later. Shortly after, she was appointed deputy director general, where the partnership with Ken Murphy began to take shape.

"It evolved. There was no sitting down saying: 'you have to do the work and I will do front-of-house'. I wouldn't be particularly fond of front-of-house anyway, and certainly wouldn't want to be a spokesperson."

The contrast between their two working styles was never more apparent than in a perusal of their respective offices. While Murphy's den was, shall we say, lived in, Keane's is a model of organisation, order and art. Pictures with the late, great Moya Quinlan and retired Court of Appeal judge Michael Peart take pride of place with strategically placed sculptures and paintings. The main photo, though, is with the late Seamus Heaney, which also provides the avatar to her WhatsApp profile.

The desk is clean and there is no visitor's chair. Long visits were not welcomed (unless your name was Seamus Heaney or Paul McGrath).

The famous 'to-do' lists

But she got things done – it was her signature. Those of us who worked with her on the Coordination Committee (which consisted of the most senior members of the Council) will have recurring nightmares of the famous 'to-do lists'. Every meeting had such a list at the end, and woe betide the committee member who returned to the next meeting without their homework done.

She regards one of her best achievements to be the Future of the Law Society Task Force, which set out as an aspirational think-tank and finished up with a long list of recommendations, most of which were implemented. Any that weren't was because they were discounted. None remained on a shelf.

"When someone said we needed to do this or that, my focus was on how do we make this happen? Where is the 'to-do list'?"

Future Coordination Committees will no longer be terrorised by the list. She applied for early retirement last year and it was agreed in December that she would depart in June. Her successor as DG, Mark Garrett, took over the reins on 4 January this year.

The experience of being both director general and deputy

director general for ten months had taken its toll. An early retirement scheme (which has been availed of by a number of other senior executives) began to look very attractive.

"I had already applied for a career break, but once the 'Open Doors' retirement programme came up, I saw an opportunity. I was worn down at that point. I was happy to support Mark getting started, but I think six months was plenty."

Time of flux

With Ken Murphy gone for the last 15 months and the directors of regulation and finance – John Elliot and Cillian Mac-Domhnaill, respectively – also departing this summer, it's a time of flux for Mark Garrett.

"I think that Mark is very lucky to be coming into a role knowing that he has the bedrock of such experienced and professional staff. Of course, there is a lot of change afoot, and change is good and necessary."

And change is what lies ahead for Mary Keane.

She will have plenty to keep her busy, at least initially. Being chairperson of the National Gallery, a role of which she is immensely proud, will continue to take up a good chunk of her time. Her board tenure will expire in two years, but she intends to attack that job with even more fervour than before. "I like the way that art affects people and the way it makes them feel. I like the way it makes me feel."

Norman obsession

And, of course, her castle. Back in 2002, she was looking for a bolthole by the sea and ultimately purchased a coach-house in Carne, Co Wexford. The coach-house was adjacent to a derelict Norman tower dating from the early 1400s.

"I kind of became obsessed with the tower. I loved that it had been there so long."

So in 2004, she sold her small house in Dublin and the coach-house. This gave her the wherewithal to buy the tower and adjoining house on an acre, extending to seven acres in 2007. She has been restoring it slowly ever since.

Ultimately, the tower, which is not far from final restoration now, may be used as a performance space.

"There will not be weddings or bridezillas near the place though – I couldn't cope!"

Why put so much time and love into a building?

SLICE OF LIFE

- ***Most inspirational teacher – and why?***
  Mary Queally, my art teacher in Mount St Michael's, Claremorris, Co Mayo – a really kind and decent human being.
- ***Favourite holiday destination and why?***
  Paris. A thousand reasons. *La ville de lumière et de l'amour.*
- ***Do you ever miss the ciggies?***
  Never – I gave them up on 1 January 2000 and it was the best thing I ever did.
- ***Biggest regret in life?***
  Not spending more time with my dear departed Uncle Sean.
- ***Favourite hunk?***
  Paul McGrath.
- ***Most memorable concert?***
  Eurythmics, Point Theatre, 1989.
- ***Most beautiful work of art?***
  The *Pietá* by Michelangelo, St Peter's Basilica, Rome.
- ***Top of the bucket list of places yet to visit?***
  Rwanda – to sit with the gorillas in the mist.
- ***Top of your list of things yet to do?***
  To listen to *Ulysses* – I tried and failed to read it several times.
- ***Have you ever flown a kite?***
  Not successfully.
- ***Favourite alternative job/career?***
  Astronaut.

"It's all about legacy. I'm a singleton; I don't have children. Most people's legacy are their children. This is a building I have saved, because it would have crumbled without me. It will be there long after me. That, and being involved with the gallery, which is part of the heritage of the State, is very important to me."

Of course, she is not entirely single. Cocoa and Panther would have something to say, or rather purr, about that. Referred to simply as 'the boys', they are part of the family in Wexford and roam the battlements like the feline warriors they are.

While her long-lasting legacy may well be the castle, the mark she has left on the Law Society will be permanent. The first female director general may have been a reluctant one, but she steered the legal profession's representative body through one of its most challenging times, and did so with grace, monumental efficiency, and no little aplomb.

"I will miss the building and I will miss the staff. I'll miss the buzz, I think. I don't know what's coming next, but I hope it will be interesting. I have a fairly extensive to-do list prepared for myself!" g

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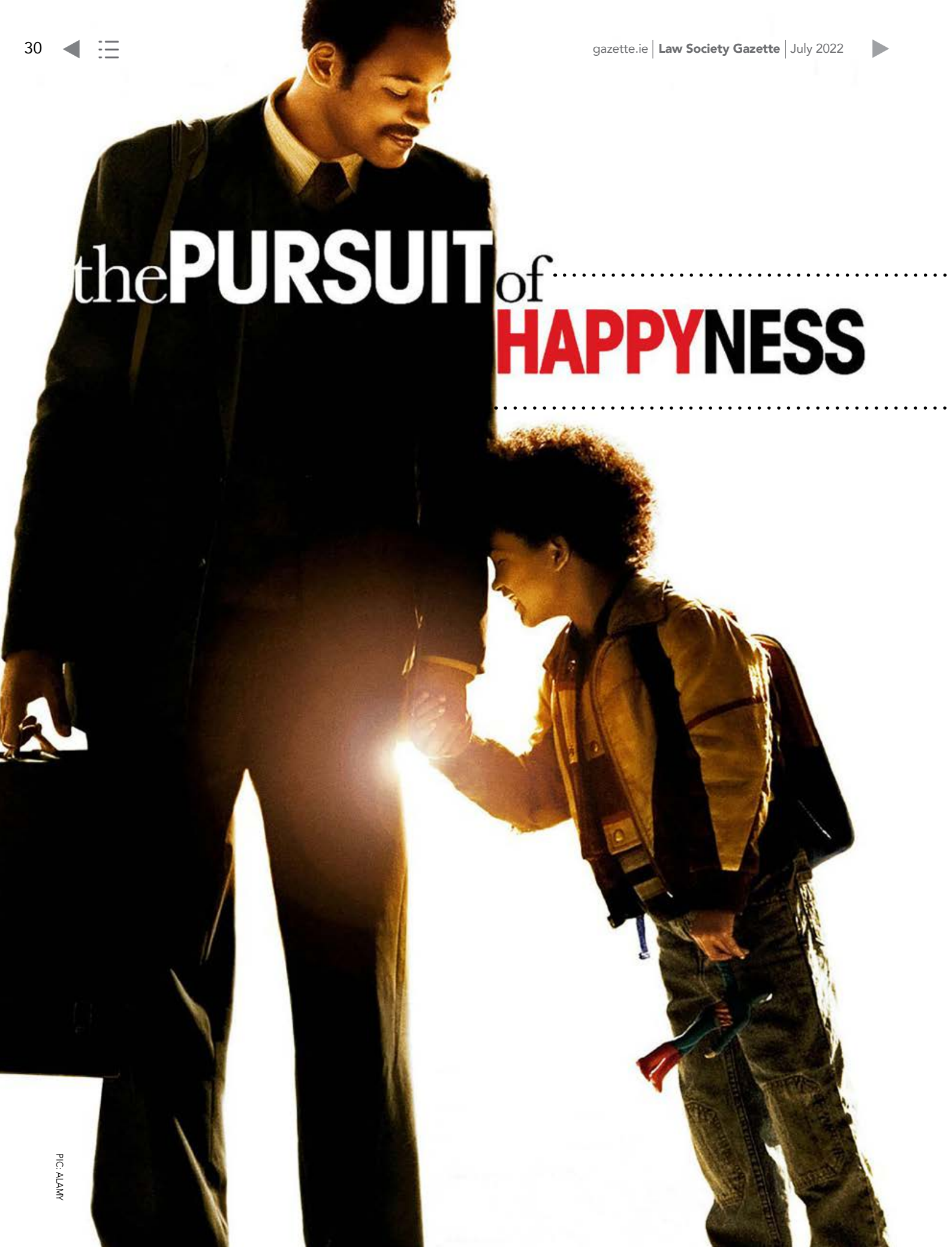
Stuart Gilhooly SC is a partner at HJ Ward LLP in Dublin and is a past-president of the Law Society of Ireland.

the PURSUIT of HAPPYNESS



PIC: ALAMY

The Law Society is on the cusp of rolling out an exciting new service to its members – 'Psychological Services'. Its head, Antionette Moriarty, speaks to Mark McDermott about the drivers behind this innovation

If you were looking for an advertisement for the power of psychotherapy to change your life, then Antoinette Moriarty is it. The head of Psychological Services at the Law Society, Antoinette is full of beans, bursting with ideas, if a little reticent to speak too much about herself. As we progress, however, it becomes apparent that she is determined, with this new venture in particular, to reach out – beyond the Psychological Services team, beyond the Law Society – to the wider legal community.

The reason we're speaking is that the Law Society is on the cusp of rolling out a new member service to practitioners called 'Psychological Services'. Antoinette is heading up this exciting new venture – a first for any law society in the world.

The service has its genesis in the 'Shrink Me' module that was developed by the Society for trainee solicitors. "We have been working with students in this way for eight years," says Antoinette, "so there's a lot of evidence to show that this works. There has been so much positive engagement with future members of the profession – many of our trainees are now qualified and continue to be involved with us in a very active way.

"Our team had the privilege of listening deeply to the concerns, hopes, desires and challenges experienced by thousands of now full members of the profession. As I and my team of ten psychotherapists sat with trainees, we increasingly felt a 'whole-systems' approach was the only way of effecting lasting change. Otherwise we were patching up the wounded to go back into battle!

"So, unlike any other jurisdiction, the Law Society has a clear view of what the 'pain points' are, and has an appreciation of the incredible potential of our legal community when the 'right' conditions are created.

"In psychological terms, we think of this as creating a 'facilitating environment', so that lawyers can reach their optimal potential, professionally and personally. One should not be at the cost of the other. This is the driving force for me, personally.

"Psychological Services is a way of taking these principles and all that experience – which we know works highly effectively – and bringing that to our members in a very positive, collaborative way. This is a collaborative initiative – it's not the Law Society dictating or threatening the current business model. It's about collaborating and helping law firms and individual practitioners."

Sense of urgency

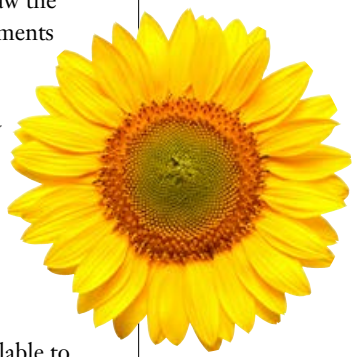
So who's behind this – and why is it being introduced?

"This is driven by the Council of the Law Society," Antoinette says, "which understands the fantastic sense of the urgency and the importance of this for the profession. At the Council meeting last January, there was much debate, discussion, understanding and support for the value of having a psychologically informed way of thinking about professional practice. The president, Michelle Ní Longáin, has taken the lead on this.

"Other key supporters on the senior management team who have backed this new approach are the outgoing deputy director general, Mary Keane, who understands the very positive impact that the programme has had on trainees and believes that all members should be able to benefit likewise."

The other main drivers are director of education

TP Kennedy and director of representation and member services Teri Kelly. They both saw the opportunity to graft elements of their departments together in order to deliver this exciting new approach to members' development.



Antoinette says: "This is a system of training that is world class. We now want to extend it so that it's available to those members who didn't have the opportunity to avail of this type of service during their own solicitor training."

Not just about mental health

The programme has also had significant input from professional wellbeing executive Julie Breen, who says: "I see the expanded Psychological Services being about the Law Society connecting with current and potential members in a meaningful way, understanding what drives members, what their strengths and difficulties are, and having authentic and curious conversations with them about these. It's also about supporting members to connect with each other, and creating spaces for strengthened relationships, support networks, and collaboration."

Breen points out that the focus of Psychological Services won't solely be on supporting the profession through a 'mental-health' framework. "There are so many connected and influencing factors that affect our person over time, such as gender equality, diversity and inclusion, legal and firm structures, systems, culture, and social shifts, such as the MeToo movement," she says. "As a service, we are curious about all of these connecting parts that shape us individually, whether as trainees or practising lawyers – and as a profession."

She also points to the Dignity Matters Project, which forms part of the new expanded service. Breen believes that this has the potential to change the profession from the inside out. Dignity Matters started with members putting forward a motion at the 2021 AGM for the profession to internally reflect and examine itself in relation to harmful workplace behaviours. "I believe that the success of the project now depends on what members, firms, and the Law Society do collectively to drive forward the *Dignity Matters Report* recommendations. I don't think the project will succeed if the Law Society alone, or individual members alone, make changes. It needs all of us – and the expanded Psychological Services plans to bring us together to drive this collective action."

Hidden qualities

Antoinette says that "basically, Psychological Services will address the psychological and emotional development of a lawyer, the internal attributes and capacities of a lawyer, the hidden qualities that make your day-to-day life work well, and what constitutes an effective leader in your team or group. Qualities like empathy, listening, being able to lead from a very inclusive way, and being able to engage with clients from a position of understanding are all investigated.

"This may feel like a very different way of addressing the needs of a solicitor, but we teach them because they're not something we necessarily inherit naturally, and so they need to be taught," says Antoinette. "And just like we need to learn how to do a transaction or conveyancing or any of the other transactional aspects of law, there are many additional required skills that, up to this point, were either learned on the job if you were fortunate, or perhaps never acquired at all.

"In the new Fused PPC course, which will start in September [see p46], Shrink Me will be a semester-long module. Starting in September and running until Christmas, it will introduce a number of new ways of learning, including something we call 'free time-concentrated therapy'. We're not aware of any other jurisdiction that provides this as part of their legal training, but it makes so much sense to us that we should do so."

Global issue

"High demands on the personal wellbeing of lawyers is a global issue, so it's not particular to Ireland," Antoinette continues. "I think what's different about the Law Society, though, is that we're responding directly and strategically to the underlying structural causes. We are moving beyond pathologising individuals and into the creation of a healthy and sustainable way of practising law.

"For example, young people across the professions, globally, are not staying in their careers for anything like the period of time they would have in the past. That's a very expensive way of running a practice, because you might invest very heavily in trainees, and then find that the average period of time they remain is nine to 12 months or one to two years, rather than ten to 15, or 20 to 25, or 40 years of service. That whole psychology of service has evaporated. There's huge support now for the idea of movement – of moving jobs. Young lawyers, similar

> THIS IS A COLLABORATIVE INITIATIVE – IT'S NOT THE LAW SOCIETY DICTATING OR THREATENING THE CURRENT BUSINESS MODEL. IT'S ABOUT COLLABORATING AND HELPING LAW FIRMS AND INDIVIDUAL PRACTITIONERS

to young medics and tech professionals, are moving around the world.

"Currently, the starting salary for a young lawyer in Britain's 'Magic Circle' firms is anything from €121k to €160k. That's an incredible market – one we can't compete with on a salary basis. However, by redesigning work in a clever way, we can create workplaces that can entice young people in a more meaningful way, and encourage them to stay. The idea of young solicitors staying with us just because they've joined us or they've trained with us – that's gone. We need to reflect on the structure of law firms, the structure of business, the way we engage with people and with clients – and we're starting that process."

Building blocks

What building blocks is she putting in place to facilitate this change?

"To begin with, we're looking at lawyers 'in the round'. We're starting with secondary school students who are looking at their options. We've already started to promote law among transition-year students in order to try to include a much broader spectrum of people coming into the profession.

"We're going to work right up through each traineeship, addressing the key stages of challenge throughout the first five years. The IBA's recent global wellbeing report highlighted nought-to-five years as one of the critical periods for young lawyers in terms of stress, of not being adequately resourced to do the work given to them, and not having a safe place in which to make mistakes or to get support.

"In addition, we will be addressing other categories, such as women who are at particular risk of leaving the profession early, because it hasn't necessarily adapted to the fact that we now have 50/50 men and women in practice. By working with women to empower them to assert their own needs and design a workplace that works for them, that will have an incredible impact. We're also going to be working with senior leaders – our 'high-impact lawyers'.

"These senior lawyers *are* the profession in many ways. They get to determine the shape and structure of their firms, which in turn determines the impact for everyone else in those firms. I should add that Psychological Services can't lead this change in the profession if it's not done in tandem and in consultation with senior leaders. We're very fortunate that, for those senior leaders we've approached in the Irish market, they are very open to addressing these issues. I think the experience is very different to what people might imagine. It's not threatening, it's not taking away their business model. It's discovering the 'pain points' and helping them to build solutions.

"Psychological Services wants to hear from people leading teams, to hear what it's been like to be at the helm over these past couple of years – and what we can provide for them. So, for instance, what kind of supports do they need? What kind of member services should we be providing?

"If we're working in a psychologically informed way internally, we need to work in a psychologically informed way when we consult with our members. So this isn't going to be us deciding or telling anybody what they need. We'll be using our skills and frameworks to help build new ways of working that are regarded as good practice in many other industries, but have been slow to come to law.

"This is not a choice between creating a healthy work environment or the business. It's an enhancement of business. Business is changing – and we have to change with it. I am so proud that our Law Society in Ireland is a leader. We have been resourced so generously, over many years, that we now find ourselves working side by side with our international colleagues through the International Bar Association and the American Bar Association to build a healthy profession globally. It's an incredible honour, and one that all of us at the Law Society should be proud to be part of."

> UNLIKE ANY OTHER JURISDICTION, THE LAW SOCIETY HAS A CLEAR VIEW OF WHAT THE 'PAIN POINTS' ARE, AND HAS AN APPRECIATION OF THE INCREDIBLE POTENTIAL OF OUR LEGAL COMMUNITY WHEN THE 'RIGHT' CONDITIONS ARE CREATED

Mark McDermott is editor of the Law Society Gazette.

IN A NUTSHELL

Law School Psychological Services was established in January 2014. What began as a small counselling service has expanded rapidly to cater for a range of psychologically informed programmes and services. Its primary work has been with trainee solicitors attending the Professional Practice Courses. The service is now being expanded to collaborate with qualified solicitors and law firms. To find out more, contact the team at psychologicalservices@lawsociety.ie.

Trainee solicitors

Visit lawsociety.ie for more information on:

- Shrink Me: Psychology of a Lawyer (Professional Practice Course module),
- Time-concentrated therapy (individual and group therapy),
- Reflective practice groups.

Qualified solicitors

Visit the website for more information on:

- Suite of CPD programmes with Law Society Professional Training,
- Professional Wellbeing Hub.

THE BLAME GAME

Settling with multiple defendants means multiple difficulties. John Kennedy examines two significant recent judgments of the superior courts on concurrent liability

PIC: SHUTTERSTOCK

The *Civil Liability Act 1961* is over 60 years old, but as recent decisions demonstrate, it remains relevant and tricky. Among other things, the act provides that, where two or more persons are responsible for damage to another, the injured party can recover against all the parties responsible

THE COURT OF APPEAL FOUND IN THEIR RECENT *McDONAGH* JUDGMENT THAT A DEBT CLAIM AGAINST A BORROWER AND A NEGLIGENCE CLAIM AGAINST A VALUER WERE NOT ACTIONS TO RECOVER THE SAME DAMAGE. IT WAS FOUND, THEREFORE, THAT THE ASSERTED LIABILITY OF THE VALUER AND THE BORROWERS WERE NOT CONCURRENT

where the parties who inflicted damage are considered 'concurrent wrongdoers'.

Section 11 of the act sets out that two or more persons are concurrent wrongdoers "when both or all are wrongdoers and are responsible to a third person … for the same damage, whether or not judgment has been recovered against some or all of them".

The issue of what constitutes the same damage has been looked at many times. In *Lynch v Beale* (1974), a hotel owner sued his architect, builder, and subcontractor for alleged wrongdoing. The High Court ultimately ruled that there were two major causes of structural defects in the building: a foundation failing with consequent settlement at one corner of the building, and the failure of prestressed concrete beams.

There were ultimately three defendants in the case. Each one was found guilty of a different type of wrong, but causing the same damage: the architect was deemed in breach of contract for the design; the building contractor was vicariously liable for the actions of the subcontractor; and the subcontractor was guilty of negligence in his build. All three were found to be concurrent wrongdoers.

The 1% rule (as it is colloquially known) relates to section 12 of the act, which imposes joint and several liability on concurrent wrongdoers. If a concurrent wrongdoer is found to be liable for only 1% of a plaintiff's loss, it could end up having to pay 100% of the damages awarded to the plaintiff.

In *Lynch*, the court apportioned one-third of the blame on the architect and two-thirds on the contractor and its subcontractor. As a result of section 12 of the act, the hotel owner was entitled to look to any one of the defendants to recover 100% of the judgment sum.

The reason behind the 1% rule was succinctly stated in the judgment of the Supreme Court in *Iarnród Éireann (Irish Rail) v Ireland* (1996): "As between defendants, it is provided that there can be an apportionment of blame, but if a deficiency has to be made up in the payment of the damages, it is better it should be made up by someone in default than that a totally innocent party should suffer anew."

Multiplicity of problems

There have been two significant recent judgments on concurrent liability – the 2020 Supreme Court decision in *Defender Limited v HSBC France* and the recent Court of Appeal decision in *Ulster Bank DAC & Ors v McDonagh & Ors* (2022).

Both cases involved a plaintiff who settled with one wrongdoer and then attempted to obtain the remainder of their claim from a concurrent wrongdoer.

Section 17(1) of the act sets out that if a plaintiff enters into a settlement agreement with one defendant, it will discharge the other concurrent wrongdoer's liability for the same damage if the agreement contains an intention to do so.

However, often settlements will fall to be considered under section 17(2) of the act. This provides that, where a plaintiff and a first defendant are identified together, any claim brought by the plaintiff against a second defendant is reduced by the greater of (a) the amount of the settlement, or (b) the amount stipulated in the settlement agreement, or (c) the extent by which it can be said that the first defendant was culpable for the claim.

Defender

The Bernie Madoff scandal involved the largest private Ponzi scheme of all time, with Defender Limited alone suffering approximately $540-million-worth of losses. Many Irish-based companies were dragged into the resulting litigation.

Defender settled with Bernard L Madoff Investment Securities LLC for roughly 75% of this sum, before bringing an application in the Irish courts to recover the remainder of its losses from HSBC.

Defender alleged that HSBC was negligent in its role as custodian and that it had breached its duty in failing to properly monitor Madoff's company, despite suspicions that it was acting nefariously.

In the High Court, Twomey J had no doubt that Madoff should be held 100% liable for Defender's loss and, as such, HSBC's liability was reduced by 100%.

Defender appealed this decision, arguing that the High Court's literal interpretation of section 17 was incorrect, and that the true intention of the act was that an injured plaintiff should always be able to recover full damages.

Defender accepted that it was to be identified with Madoff for the purposes of apportioning liability. It argued that such apportionment should proceed in line with the provisions concerning contributory negligence in section 34 of the act, which would require the plaintiff's award to be reduced by an amount that is "just and equitable", having regard to the degrees of fault of Defender and HSBC.

The Supreme Court rejected this argument and agreed with the High Court's interpretation of section 17 – that to assess the reduction of Defender's claim against HSBC, the court had to examine the level of blame attributable to each party in line with the third limb of section 17(2).

However, the Supreme Court refused to follow the High Court's conclusion that the only possible outcome was an apportionment of liability of 100% against Defender. Mr Justice O'Donnell found that he could not conclude "with the requisite degree of confidence that there was no prospect of any apportionment of liability and damages other than 100% to 0%".

The matter was therefore sent back to the High Court and was listed for trial before Mr Justice Sanfey. At 4pm on 14 April 2021, the parties (having been given time to talk on the opening day) informed the High Court that the matter had been resolved by agreement on confidential terms.

McDonagh appeal

This case concerned the purchase of an 82-acre site in Kilpeddar, Co Wicklow. It was purchased by three McDonagh brothers. Ulster Bank financed the purchase with a €21.8 million loan.

The bank argued that it had granted the loan based on a valuation of the lands provided by CBRE. It was asserted that this valuation was inaccurate. Prior to the hearing of the *McDonagh* case, the bank had sued CBRE for negligence in relation to the valuation of the site and reached a settlement of €5 million.

Mr Justice Twomey delivered judgment in the High Court on 6 April 2020. He found the McDonaghs jointly and severally liable to the bank in the sum of €22,090,302.64. He delivered a supplemental judgment on 23 June 2020 dealing with other issues.

Both decisions were appealed. The Court of Appeal delivered a joint judgment of Mr Justice Collins and Mr Justice Murray (with which Ms Justice Pilkington agreed) on 6 April 2022. It found that a debt claim against a borrower and a negligence claim against a valuer were not actions to recover the same damage – the borrower's potential liability being for the whole of the debt, whereas the valuer (at most) was liable only for the portion of the moneys lent that the lender is unable to recover from the debtor. It was found, therefore, that the asserted liability of the valuer and the borrowers were not concurrent.

> THE *McDONAGH* DECISION IS ALSO OF INTEREST IN FINDING THAT (EVEN IF THE ACT HAD APPLIED) IN TERMS OF DEBT, A VALUER WHO PRODUCED A NEGLIGENT VALUATION AND A BORROWER WHO WAS CONTRACTUALLY OBLIGED TO REPAY A DEBT ARE NOT CONCURRENT WRONGDOERS

It was therefore successfully argued by the bank that a claim for recovery of a loan is akin to seeking an order for specific performance of a contractual obligation. The Court of Appeal held that "contribution as between, or claims as against, concurrent wrongdoers has never applied to an action for the recovery of a debt and nothing in the [*Civil Liability Act*] changes that."

Not an action for 'damages'

While the *McDonagh* decision confirms that the act does not apply to an action for the recovery of a debt, as it is not an action for 'damages', the decision is also of interest in finding that (even if the act had applied) in terms of debt, a valuer who produced a negligent valuation and a borrower who was contractually obliged to repay a debt are not concurrent wrongdoers. The case has implications for other professional advisors, in that the issue of the 'same damage' must be considered.

It is quite remarkable that an act that is over 60 years old continues to spark debate and create new law. The *McDonagh* and *Defender* litigation should remind us all not to become complacent about long-standing legislation. It is also a reminder to practitioners to always consider your client's case from first principles, to identify their best arguments, and to vigorously pursue them.

John Kennedy SC is a practising barrister, specialising in commercial disputes.

LOOK IT UP

CASES:

- *Defender Limited v HSBC France* [2020] IESC 37
- *Iarnród Éireann (Irish Rail) v Ireland* [1996] 2 ILRM 500
- *Lynch v Beale* [1965] WJSC-HC 4859 (unreported, High Court, 23 November 1974)
- *Ulster Bank DAC & Ors v McDonagh & Ors* [2020] IEHC 185 and [2022] IECA 87

LEGISLATION:

- *Civil Liability Act 1961*

EMBRACING MEDIATION

In recent years, there has been significant interest in mediation, and it has become a much more common approach to dispute resolution. Judge Keenan Johnson and Dr Bernadette Ní Áingléis say that this has motivated judges to familiarise themselves with the concept

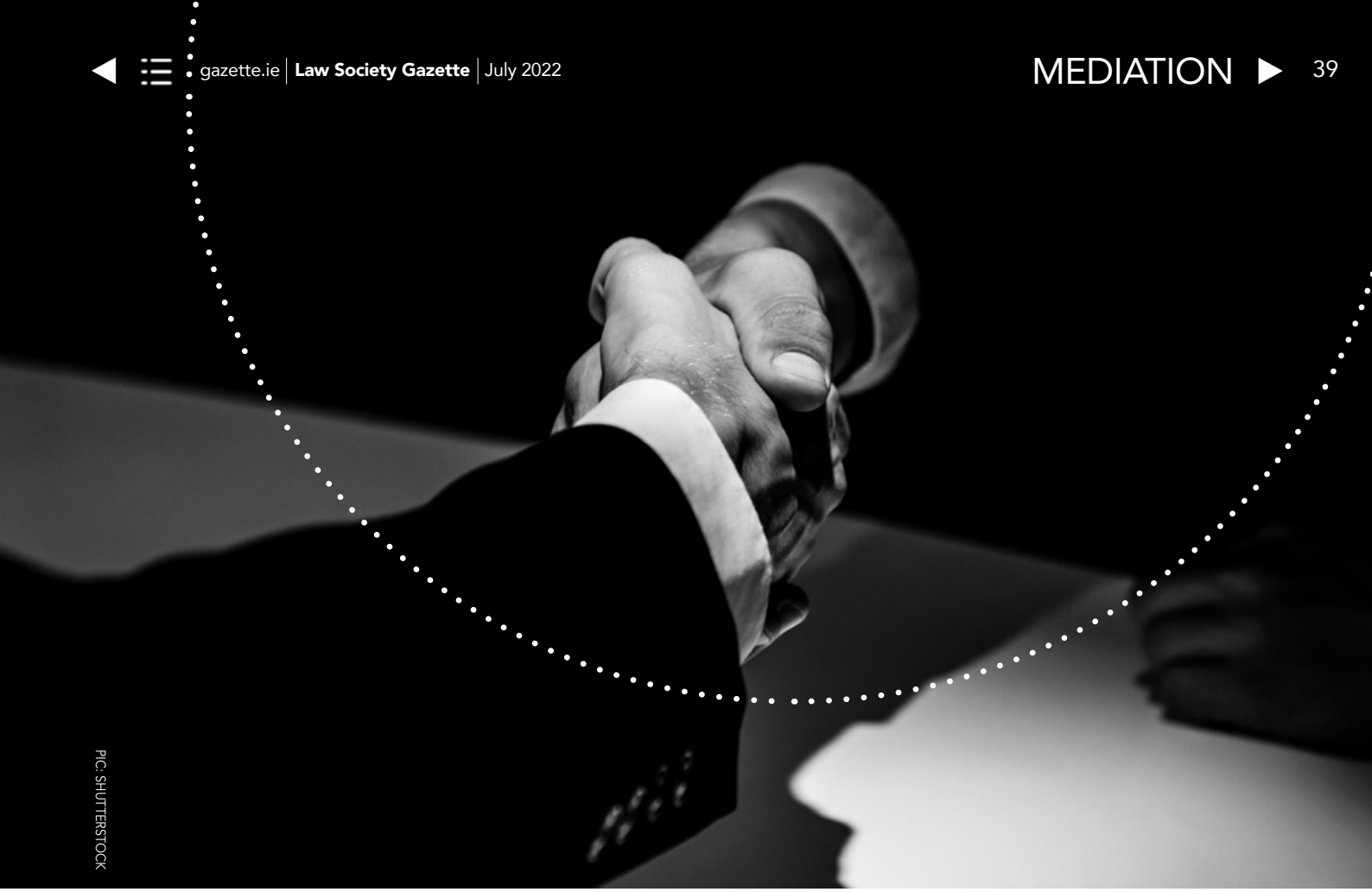
The EU's *Mediation Directive*, together with the Law Reform Commission's consultation paper and report on alternative dispute resolution and alongside the enactment of the *Mediation Act 2017*, have all contributed to the growth in mediation.

GEMME – *Groupement Européen des Magistrats pour la Médiation*/European Association of Judges for Mediation – is an organisation that seeks to assist judges in familiarising themselves with mediation. The establishment of GEMME Europe and the Irish branch (in 2016) reflects this growth in mediation practice, which has been driven by both legislative changes and a growing realisation by litigants and practitioners that mediation has much to recommend it over the traditional adversarial form of dispute resolution.

The *Mediation Directive* (enacted on 21 May 2008) was given effect in Ireland under the *European Communities Mediation Regulations 2011*. It applies to cross-border disputes only, and it obliges each member state to encourage the professional training of mediators and to ensure a high standard of mediation. Interestingly, the directive notes that mediation can be conducted by a judge provided she/he is not responsible for any judicial proceedings concerning the dispute.

The *Mediation Act 2017* allows judges to direct parties to consider mediation. For judges to make such a direction, they must be familiar with mediation and the processes involved. Towards this end, the establishment of GEMME Ireland has provided judges with a pathway to understanding the dynamics of mediation and how the process works.

Having an in-depth knowledge of mediation (which GEMME membership provides) enables a judge to make a more informed and potentially more



PIC: SHUTTERSTOCK

successful direction to the parties to engage in mediation. Furthermore, it enables a judge to determine what disputes are best suited to resolution through mediation, how best to introduce the concept to the parties, and when best to make such an introduction. This knowledge is critical to ensuring that mediation has the best prospects of success.

It is hoped that the establishment of GEMME Ireland and the growth in its membership will ensure that mediation becomes embedded in the Irish legal system. It will also position Ireland strongly to take advantage of the opportunities to host the mediation of international disputes following Brexit. Ireland is now the main common-law English-speaking jurisdiction in the EU and is in pole position to host dispute resolution between EU countries and other common-law jurisdictions, such as the US, Canada, and Australia.

Flexible process

Mediation offers a flexible, non-adversarial resolution process underpinned by the voluntary engagement of the parties. The primary focus of mediation is on the interests of the parties as opposed to their respective rights. It is a process that requires a fundamental belief in the potential of the parties to resolve their differences.

When resolving disputes through litigation, a judge is generally required to determine matters on the basis of legal rights. This process frequently does not allow for the emotional backdrop and feelings of the parties, which regularly play a significant role in the resolution of the dispute.

A strong feature of mediation is that the process is not constrained by pleadings. It provides a forum whereby issues outside of the pleadings, but which are playing a strong role in the intensity of the dispute, can be ventilated respectfully and reflected upon by the parties. Accordingly, mediation has the potential to remove the obstacles that are preventing the resolution of the dispute, while at the same time preserving the relationship between the parties.

The preservation of the relationship is particularly important in family-law disputes, and mediation has a key role to play in the resolution of these highly emotionally charged disputes. In mediation, the resolution of the dispute at all stages remains within the ownership of the parties. It therefore gives the process a greater prospect of being successful, in contrast to a litigated solution that involves a judge-imposed solution.

Turlough O'Donnell SC, in a joint seminar with Mr Justice Michael Peart (hosted by GEMME Ireland in 2019 and moderated by Emer Woodfull), drew attention to the importance of learning core mediation skills that will 'hold the space' – the non-physical space where people come to reconcile. GEMME Ireland seeks to assist judges to understand mediation and how and where it works best.

GEMME Ireland

GEMME is an association of judges of the EU member states and member states of the European Free Exchange Group, including Switzerland, Liechtenstein, Norway, and Iceland.

The primary aim of GEMME is to promote national associations of judges who are committed to mediation and other alternative forms of dispute-resolution processes that are legally permitted. Participation in GEMME conferences and related activities enables the sharing of information and best practice in mediation

across Europe. It also affords opportunities for the professional training and upskilling of judges in effective mediation and ADR approaches.

The first chairperson/president of GEMME Ireland was Mr Justice Paul Gilligan (retired judge of the Court of Appeal). The current chairperson/president is Ms Justice Mary Rose Gearty (High Court), inaugural director of Judicial Studies in Ireland and head of European affairs for GEMME. The other executive officer members are Judge Rosemary Horgan (secretary), Keenan Johnson (PRO), and Judge David McHugh (treasurer).

Membership of GEMME Ireland includes many members of the Irish judiciary and associate members who are accredited mediators. The branch regularly hosts presentations and seminars on mediation and ADR topics, including mediation in commercial matters, family-law matters, civil matters, and in the area of restorative justice. The events are live-streamed to maximise engagement.

Last November, Sir Geoffrey Vos (Master of the Rolls and head of civil justice in England and Wales) was the keynote speaker at the GEMME Ireland event on mediated interventions within the court dispute-resolution process.

Sir Geoffrey spoke of how dispute resolution outside or alongside the court process should be the default position, as it is usually quicker, cheaper, and more satisfactory to the parties. He referred to the use of artificial intelligence in the settlement of minor commercial disputes. Sir Geoffrey confirmed that digital technologies have been used successfully in resolving a range of civil cases, freeing up court time, costing significantly less, and reducing psychological and economic harm for parties involved – and for society more broadly. He concluded that "technology now allows us to rethink justice" and that "mediation should be in the vanguard for online dispute-resolution approaches".

He further suggested that mediation should no longer be considered as 'alternative', but rather be seamlessly interwoven into the lexicon, principles, and practices of dispute resolution in the legal justice system.

Throughout his presentation, Sir Geoffrey emphasised that the spotlight should always be on the resolution of matters through mediation at the earliest opportunity, as this enables people to get on with their lives. He believes that mediation should be suggested at every stage of the dispute-resolution process, from prior to the institution of proceedings, through the course of the proceedings, and continuing even when the matter has commenced in court.

PIC: SHUTTERSTOCK

Come together, right now...

He reminded the audience that the role of the judge is to serve the people, and that there would always be a need for court processes. He proposed a recalibration of the judicial role – from focusing on dispute, to focusing on resolution.

Unquestionably, the enactment of the *Mediation Act 2017* gives Ireland, and individual members of the judiciary, plenty of scope to consider embedding the key tenets of Sir Geoffrey's presentation into legal practice and legal thinking. Mediation is used most frequently in the areas of family law and commercial disputes.

Family mediation seminar

The Family Mediation Service in Ireland has pioneered hugely successful approaches to mediation. Earlier this year, GEMME Ireland and the Family Mediation Service hosted an innovative mediation seminar.

The event was a 'fish-bowl' demonstration by experienced practising mediators in the Family Mediation Service on how mediation works in high-conflict cases. Attendees had opportunities to discuss ways of de-escalating conflict, and various contexts in which mediation would *not* be an appropriate dispute-resolution approach.

Commercial mediation seminar

Increasingly, mediation is being used to resolve commercial disputes. GEMME Ireland recently hosted a very successful live-streamed commercial mediation event: 'Settling commercial disputes: the role of the judge and the role of the mediator'. Keynote speakers included Mr Justice David Barniville (Court of Appeal) and Mr Paul Gilligan (retired judge of the Court of Appeal). The event was moderated by Helen Kilroy (partner in the litigation and dispute-resolution department of McCann FitzGerald LLP).

Mr Justice Barniville outlined that judges of the Commercial Court had the benefit of being able to read case papers in advance of the hearing, thereby allowing them to consider if mediation would be an appropriate course of action in the particular case. Interestingly, a little at variance

with what Sir Vos had outlined, Mr Justice Barnville believed that timing was particularly important in determining the success or otherwise of a mediation intervention. He emphasised the importance of discerning when it would be appropriate and beneficial to parties to introduce mediation.

Mr Justice Paul Gilligan reminded the audience of a favourable success rate when mediation is skilfully introduced.

The benefits of mediation were explored by both speakers, drawing from their professional experience and legal expertise. The autonomy of the parties to choose their mediator and the venue for mediation was seen as a 'strong positive', as opposed to court proceedings, where parties do not have a choice of judge or venue.

The move towards mandatory mediation in some jurisdictions was viewed as problematic, particularly in the context of imposing additional costs on parties and where the voluntary nature of mediation was no longer a reality. However, mandatory information meetings in relation to mediation were considered by both speakers to be useful and beneficial.

Restorative justice seminar

GEMME Ireland has highlighted the use of mediation in the criminal-law contexts through the restorative justice (RJ) process. The branch hosted an online discussion on the use of RJ in Spain and Ireland. The theme – 'Bringing restorative justice home' – was explored by Judge Patricia McNamara (District Court), Dr Ian Marder (assistant professor in criminology, Maynooth University) and Prof Helena Soleto Muñoz (Criminal and Procedural Law Department, University Carlos 111 Madrid, and a Council of Europe expert on restorative justice and ADR).

Judge McNamara outlined the orientation of restorative justice approaches in Ireland as one that emphasises efforts to repair the harm caused by the offender and to encourage desistance from future offending through the voluntary meeting of the victim/community and the offender. She spoke of the range of RJ services and programmes provided in Ireland through a collaboration of stakeholders in the criminal justice system, for example, the Probation Service and the Garda Síochána.

Prof Soleto Muñoz indicated that RJ approaches are more successful in Spain with first offenders who have good networks of support around them. On the question of sentencing and the role of RJ, it would seem also that both jurisdictions – Spain and Ireland – have similar viewpoints: the matter depends on the offender, the offence, and on the voice of the victim.

> GOOD MEDIATED OUTCOMES ARE USUALLY ACHIEVED WITH THE ADVICE AND INPUT FROM THE LAWYERS OF THE RESPECTIVE PARTIES. IT IS ALSO IMPORTANT TO REMEMBER THAT THE PRIMARY ROLE OF THE MEDIATOR IS TO ACT AS A FACILITATOR, NOT AS AN ADVISOR

Dr Marder suggested that virtually all cases could be assessed for suitability for RJ approaches. He proposed that RJ should be available at all stages of the criminal-justice process, but that the suitability of cases for RJ ought to be decided on a case-by-case basis. He also advocated for increasing the levels of awareness of mediation and, in the process, would assist the successful rollout of RJ.

GEMME Ireland hopes that, by increasing awareness of mediation through its events and activities, it can assist in this objective.

Absolute GEMME

It seems clear that lawyers should embrace mediation, as it considerably reduces the stress associated with litigation – not only for themselves, but also their clients. Furthermore, the sense of satisfaction that comes from contributing to a successful mediated outcome far outweighs the trials and tribulations associated with having 'lost' the case in litigation, or having only achieved partial success.

It is important to remember that good mediated outcomes are usually achieved with the advice and input from the lawyers of the respective parties. It is also important to remember that the primary role of the mediator is to act as a facilitator, not as an advisor. Accordingly, while many mediators may have legal qualifications, this is not a requirement to be a good mediator. Nevertheless, a mediation without the benefit of good legal advice is unlikely to succeed, because the parties will not have the requisite knowledge to make an informed decision in respect of the final mediated agreement.

Indeed, it is fair to say that judges are often assiduous when ruling on mediated agreements, to ensure that each of the parties have had independent advice and are fully cognisant of the agreement and its effects. This ensures an equality of bargaining power, which is essential to the preservation of the integrity of the mediation.

The growth of GEMME Ireland, therefore, marks an exciting time in the area of dispute resolution and, in particular, the development and rollout of mediation. Anyone who wishes to become an associate member of GEMME Ireland may apply for associate membership and enjoy benefits that include free access to seminar events hosted by the branch. Contact GEMME Ireland at info@gemmeireland.ie. g

Judge Keenan Johnson is a judge of the Circuit Court and an executive committee member of GEMME Ireland. Dr Bernadette Ní Áingléis is an education advisor, an accredited mediator, and administrator of GEMME Ireland.

LOOK IT UP

LEGISLATION:

- *Directive 2008/52/EC on Certain Aspects of Mediation in Civil and Commercial Matters*
- *European Communities Mediation Regulations 2011* (SI 209/2011)

LITERATURE:

- Law Reform Commission, *Consultation Paper on Alternative Dispute Resolution* (2008); *Alternative Dispute Resolution: Mediation and Conciliation* (2010)

Your vote – your choice

At a special general meeting on 3 March 2022, an overwhelming 96% of members voted to introduce electronic voting for Council elections. Peter McKenna urges all to cast their e-vote in Council Election 2022

WE FOUND THAT, TYPICALLY, E-VOTERS HAVE A BETTER VOTING EXPERIENCE, WITH LESS FRICTION. THEY ARE ABLE TO VOTE MORE EASILY AND EFFICIENTLY. E-VOTING IS MORE ACCESSIBLE THAN TRADITIONAL VOTING SYSTEMS

Elections to Council are held every year, in which 15-16 ordinary members and two provincial delegates are elected to serve for a two-year period. These elections are extremely important. The Council is the governing body of the Law Society and, at its essence, is responsible for shaping and developing the future of our profession – and, for most of us, our profession is our livelihood.

It is a profession undergoing much change, facing challenges from all manner of directions, and operating in an environment that is constantly in flux. Therefore, members of the Council play an important role in influencing the direction of our profession and, by extension, our trade.

Having a say as to who represents us on the Council, it would be expected that voting return rates by members would be high, given the Council's important role. In fact, it's only about 24%. This has been steadily declining over recent years, with returned postal votes down 30% since 2019. More concerning, however, is that returned votes declined by almost 12% between 2020-2021 after the return to work, when an increase would have been expected. It became obvious that something had to change.

Critical mass

The operational challenges posed by the COVID pandemic led to the accelerated adoption of electronic communication technology by our profession. A critical mass of members now had the ability to connect remotely and engage electronically with the Law Society.

Less friction

On the Technology Committee, we were aware that Chartered Accountants Ireland immediately saw a sharp increase in returned election votes upon that body's adoption of e-voting. Therefore, in mid-2021, we set about investigating the potential benefits and practicalities of e-voting for our profession.

We found that, typically, e-voters have a better voting experience, with less friction. They are able to vote more easily and efficiently. E-voting is more accessible than traditional voting systems, facilitating voters who live or work in remote areas, may be on holidays during the voting window, are on maternity leave, have disabilities for whom the practicalities of postal voting can be challenging, and who cannot/do not wish to leave their house (for example, due to familial demands or a health condition). E-voting protected the health of the most vulnerable voters and improved the accessibility of voters with functional diversity. Typically, there was also a 75-80% cost saving.

Our investigations found that e-voting was the main form of voting for many professions, such as the aforementioned Chartered Accountants Ireland, the Law Society of England and Wales, the Royal Institute of the Architects of Ireland, and the Chartered Institute of Management Accountants. We also spoke to members who used e-voting at AGMs when serving on various boards for large organisations. The reports we received were overwhelmingly positive.

Therefore, a motion was successfully brought to the AGM of the Law Society last November advocating for its introduction and, on 3 March 2022, at a special general meeting of the Law Society, 96% of the attending members approved amendments to the bye-laws to introduce e-voting as the means of voting in the Council elections.

The strong support for the use of such technologies was fully reflected in the fact that ten times more voters attended the SGM remotely than in person. It was a significant moment. By introducing the ability to e-vote, we reformed our voting system and brought it firmly into the 21st century. It was one small step in amending the bye-laws, but one giant leap forward in how we now communicate and engage as a profession.

So, what is e-voting?

E-voting is a user-friendly election system that allows members to cast their votes electronically, which can be

PIC: CIAN REDMOND/GAZETTE STUDIO

either through a website, mobile app, or any internet-connected device (such as a personal computer, laptop, tablet or smartphone) at the location of the member's choice.

At its core, an e-voting system facilitates encrypted voting that is secret and secure and protects the integrity of the vote by preventing voters from being able to vote multiple times. It eliminates the need to cast votes using paper, and closely scrutinises the results in real time, reducing the cost and time involved in sending out, collecting, and counting votes.

Where are we now?

Since the AGM in November, an impressive internal Law Society project team, with oversight from the Technology Committee, has devoted a significant amount of time and effort into researching e-voting solutions adopted by other professions and organisations. Market-leading providers of such services were identified and researched.

Following the SGM, requests for proposals went out to three internationally renowned and reputable e-voting providers. At the time of writing, a preferred provider has been chosen, with extensive experience in providing such services, both nationally and internationally.

> INVESTIGATIONS FOUND THAT E-VOTING WAS THE MAIN FORM OF VOTING FOR MANY PROFESSIONS


PIC: WIKIMEDIA

The chosen system we expect to employ will include many of the common features in e-voting systems successfully adopted by other professions, both in Ireland and elsewhere. At present, it is envisaged that it will work as follows:

- An email will be sent to members with a secure link that the voter clicks on, which will bring them to the voting page that allows for a single sign-on vote.
- Alternatively, voters will be able to log on to the Law Society's website, go to the voting page, and cast their ballot securely.
- The voting platform will contain all relevant election information regarding the candidates.
- After a member votes, they will be taken to a page telling them they have successfully voted. This page will include a link to their voter receipt, showing how they voted. This will not identify the individual voter, but will include a receipt ID to which only the voter has access.
- Members will be advised regarding the voting timeframe window (that is, the dates between which votes can be cast), and the ability to e-vote will end exactly at the designated deadline date and time.
- The total votes submitted will be tallied immediately thereafter, and an electronic report generated containing details regarding the turnout, votes per candidate, and the overall results for the scrutineers to review and certify.

Advantages of e-voting

The preferred system has been selected because:

- It meets and/or exceeds industry standards for security and data protection,
- It provides for a secure ballot that allows only eligible voters to vote,
- It is configurable to allow for secondary ballots that are restricted to voters from specific geographical areas (for example, in provincial elections),
- It allows a voter to review their vote before submission,
- It allows a voter to vote just once.

As stated above, the system will be user-friendly, but we appreciate that a crucial aspect to the successful implementation of e-voting is communication. Therefore, we will be providing members with regular updates, a user guide, FAQs, and an instructional guidance video. Reminder emails will be sent to members to achieve optimal voting returns.

The members voted for change, and the Law Society has listened and acted. Steps have been taken to put in place a voting system that makes it easier and far more accessible for our members to vote. In October and November, when the time comes to cast your vote, there is now no excuse not to make your voice heard! g

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Peter McKenna is a partner in McKenna Durcan, solicitors, and is vice-chair of the Law Society's Technology Committee.

> THE STRONG SUPPORT FOR THE USE OF SUCH TECHNOLOGIES WAS FULLY REFLECTED IN THE FACT THAT TEN TIMES MORE VOTERS ATTENDED THE SGM REMOTELY THAN IN PERSON. IT WAS A SIGNIFICANT MOMENT. BY INTRODUCING THE ABILITY TO E-VOTE, WE REFORMED OUR VOTING SYSTEM AND BROUGHT IT FIRMLY INTO THE 21ST CENTURY

Fusion reaction

The Law Society's new 'fused' PPC represents a once-in-a-generation change to the system of solicitor training in Ireland. The *Gazette* reports

THIS NEW 'FUSED' PROFESSIONAL PRACTICE COURSE IS DESIGNED SPECIFICALLY TO EQUIP TRAINEE SOLICITORS WITH EXTENSIVE FUTURE-FOCUSED KNOWLEDGE, INNOVATION AND TECHNICAL SKILLS

The Law Society is set to launch its new 'fused' Professional Practice Course (PPC) on 6 September 2022. This represents a once-in-a-generation change to the system of solicitor training in this jurisdiction. The new approach has come about as a result of an engagement process undertaken by the Society with the various stakeholders involved.

By way of background, the November 2018 *Peart Commission Report* into solicitor education in Ireland set out a vision for the future of solicitor training in Ireland. This report was adopted and endorsed by both the Society's Education Committee and its Council. Proposals 21 and 22 of the report mandated the introduction of a new fused PPC that would bring together all of the taught elements of solicitor training into one academic year. This fused PPC will provide significant logistical and practical advantages to trainees and firms.

Director of education TP Kennedy says: "This new course is designed specifically to equip trainee solicitors with extensive future-focused legal knowledge, innovation and technical skills. It is built around our four pillars of professional development – specifically, legal knowledge and analytical thinking, skills, professional responsibility, and psychological development.

Context for change

Law Society President Michelle Ní Longáin is optimistic about the profession's future, saying that the legal sector is facing into an era of opportunity as it expands into new and emerging areas of practice. It is also incorporating technological innovations to deliver cutting-edge client service.

"This new era has emerged against a backdrop of a profound range of evolving social, political, technological, and environmental factors," the president said.

"The reimagined, fused PPC is a unique educational offering, providing essential and modern skills to develop the next generation of solicitors capable of innovating and collaborating together to address current and future global legal needs."

By anticipating and responding to these changes and by combining digital technologies with legal services and business acumen, the new PPC will offer trainees the skills necessary to be the legal and business leaders of the future.

Consultation process

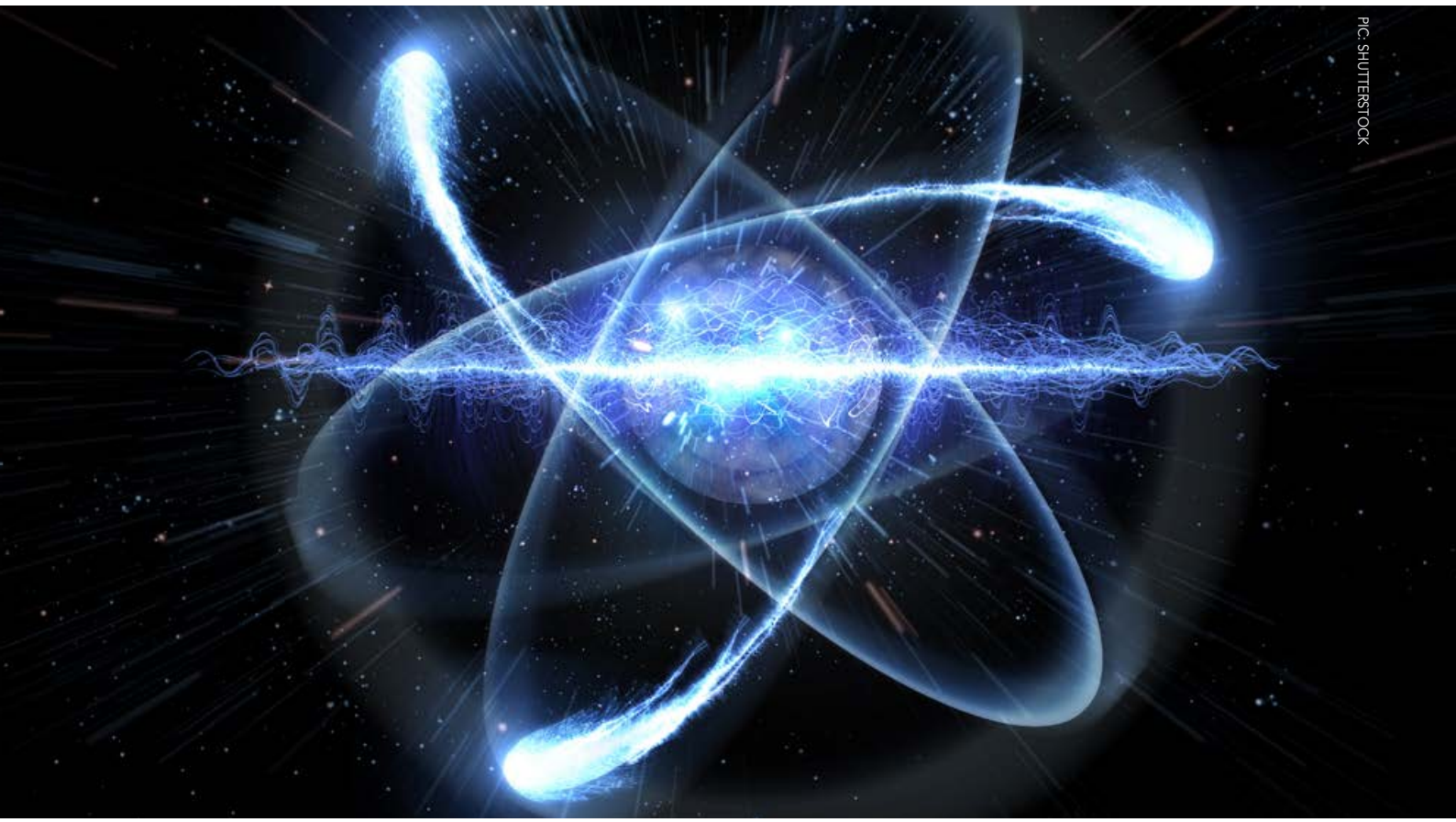
At the heart of the development of the new course has been an ongoing consultation process. Education standards manager Rory O'Boyle advises that, as far back as 2020, a detailed consultation on the new syllabus was issued to law firms. Based on the themes that emerged in that consultation, the Society hosted focus groups in April 2021 with solicitors from commercial firms, those in in-house practice, bar associations, regional firms, and small practices in order to discuss the syllabus design for the new PPC.

Drawing on the findings of the initial consultations and more nuanced discussions in focus groups, the Society's Education Committee provided detailed guidance in September 2021 on the syllabus content for the new fused PPC.

Core curriculum

The aim of the new PPC is to enable trainees to acquire and develop the knowledge and skills to become successful solicitors. The syllabus covers the following core courses, each of which will run over two semesters:

- Skills – including a continued focus on negotiations, research, drafting, advocacy, interviewing, advising, and presentation skills; together with an enhanced focus on more general skills, such as leadership, project management, office and legal technology, and finance skills,
- Professional responsibility – including enhanced coverage of legal ethics, solicitors' accounts, rules of professional conduct, and law-firm life,
- Business law,
- Dispute resolution, and
- Land law.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In addition, the following one-semester courses are also included in the core curriculum:

- Probate – wills and administration of estates,
- Family law,
- Taxation,
- Psychology of a lawyer, and
- Legal Practice Irish.

Advanced electives

Trainees will have the opportunity to complete four or more advanced electives as part of their overall training. A programme of advanced electives will be provided by the Law Society, with others co-provided, and some being external advanced electives, accredited by the Society.

The advanced electives will run after the completion of the core curriculum, namely between May and June *(the full list of potential Law Society advanced electives is set out in the table below)*.

The criteria for approval of advanced electives will be the same, regardless of whether the provider is internal to the Law Society or external. A standardised criteria and

POTENTIAL LAW SOCIETY ADVANCED ELECTIVES

- Advanced Dispute Resolution
- Advanced Legal Practice Irish
- Advanced Probate and Tax
- Aviation, Leasing and Finance
- Banking Law
- Business Awareness
- Capital Markets for Lawyers
- Child Law
- Clinical Negligence and Claim Resolution
- Company Secretarial
- Commercial Contracts
- Communication Skills
- Commercial and Complex Property Transactions
- Corporate Transactions
- Corporate Social Responsibility
- Criminal Litigation
- Data Protection
- Disability Law
- District Court Advocacy
- Employment Law
- Enforcement for Public Bodies
- Environmental Law and Climate Change
- Finance for Lawyers
- Financial Services Regulation
- Future of Lawyering in the Digital World
- Human Rights
- Investment Funds
- Insolvency
- The Post-Pandemic Lawyer: Developing Yourself from the Inside Out
- Presentation Skills
- Project Management
- Sports Law

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Friday 14 October 2022

InterContinental Hotel, Dublin.

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approval process is important to ensure consistency of standards across all elements of training. This will also ensure an enhanced experience for all of our trainees, regardless of where and with whom they choose to complete the advanced elective component of their training.

The criteria and approval process for all advanced electives on the new fused PPC was approved by the Education Committee in March 2022 and published to law firms later that month.

Committee chairperson Richard Hammond SC says: "While the new fused PPC honours our deeply held commitment to the 'generalist' approach to solicitor training, the advanced elective stage will provide significant and meaningful pathways for trainees to explore those aspects of practice of most interest to them."

Teaching and assessment

Course manager Dr Gabriel Brennan advises that, to address current and future skills requirements of the legal sector, the new PPC will focus on the employability of trainee solicitors. They will be instructed in a variety of useful skills, including project management, leadership, enterprise, risk management, collaborative problem-solving, change management and innovation.

The Law School's Dr Geoffrey Shannon SC says: "As we embark on the new course, it is an excellent opportunity to review our general approach to examinations and assessments."

To facilitate this review, he has led a wide-ranging analysis with examiners and external experts, such as Prof Paul Maharg, to ensure an exam system that mirrors the innovations introduced on the PPC course.

The assessment strategy for the new course will encompass more traditional open-book written examinations, which is accepted as the most appropriate assessment method for core knowledge-based subjects at professional practice stage, as well as more innovative assessment strategies for use in the skills and advanced-electives components of the training.

Pathway to qualification

For the new fused PPC, the in-office training period begins 14 days after the last exam on the core curriculum. Therefore, for the new fused PPC, in-office training will start in May 2023. The requirement for 24 months of in-office training runs from that date, pointing to a potential qualification date of May 2025.

Eligible trainees, however, may also be able to claim in-office credit of up to four months for training occurring prior to the start of their PPC, resulting in a potential qualification date of approximately January 2025.

PPC Hybrid

Work is also at an advanced stage to reformat the PPC Hybrid to take account of the structure of the new full-time fused PPC.

A 'fused PPC Hybrid' will be offered from January 2023 onwards, and will be delivered over a full calendar year. It will be delivered on a similar blended-learning basis as the existing PPC Hybrid model – classes will take place primarily at weekends, allowing trainees to continue working during the course.

Trainees will also be potentially eligible to attain an in-office training credit of up to five months for time spent in the office during the new fused PPC Hybrid. (Such credit would be in addition to any credit the trainee might also be entitled to claim for training occurring prior to the commencement of the PPC.)

Future strategic opportunities

TP Kennedy advises that, as a teaching faculty, the Law Society's Education Centre will continue to explore the profession's future training needs by providing world-class training.

In that context, it is worth noting that proposal 22 of the *Peart Commission Report* requires that the Education Centre keep the Professional Practice Course under constant observation. With this in mind, the PPC will be subject to a biennial review.

Richard Hammond SC says: "A critical strategic challenge over the next 12 months will be working with potential external partners – including law firms and other institutions – to deliver a suite of advanced electives that will give full expression to the aims of proposal 22. This is a new departure for us and one that we warmly welcome.

"We look forward to rising to this set of challenges as we continue to fulfil the change mandate set out by the *Peart Commission Report*. That change mandate is primarily focused on enriching the educational experience and, by extension, the profession's wealth of knowledge, of which the PPC is the core foundational element.

"Our primary focus is to enhance the educational offering we provide to our trainees and the profession and, by extension, the society we serve." g

> A CRITICAL STRATEGIC CHALLENGE OVER THE NEXT 12 MONTHS WILL BE WORKING WITH POTENTIAL EXTERNAL PARTNERS – INCLUDING LAW FIRMS AND OTHER INSTITUTIONS – TO DELIVER A SUITE OF ADVANCED ELECTIVES THAT WILL GIVE FULL EXPRESSION TO THE AIMS OF PROPOSAL 22

Transparency is the currency of ESG

General counsel have a tough task in managing green concerns, a recent In-House and Public Sector Committee webinar heard. Mary Hallissey reports

THE INCREASE IN IMPORTANCE OF ESG FACTORS HAS BEEN PRETTY ASTRONOMICAL. THESE FACTORS ARE SOMETIMES TERMED 'NON-FINANCIAL INFORMATION' AND CAN HAVE A VERY DIRECT IMPACT ON COMPANY PERFORMANCE

Because customers and other stakeholders now want to engage with 'green' companies, environmental, social and governance (ESG) issues are climbing the agenda. ESG refers to:

- Environmental factors (carbon, circular economy, and biodiversity),
- Social (modern slavery and human rights),
- Governance (transparency, diversity and inclusion).

Those requirements, and their impact on in-house solicitors and their organisations, were the topic of a panel discussion on 19 May, organised by the Law Society In-House and Public Sector Committee in collaboration with Law Society Skillnet.

The webinar heard that many market commentators believe that capital will become more expensive for those who do not have their 'ESG house in order'. Orlaith Delargy (associate director at KPMG sustainable futures) said that disclosure and action were closely linked. "ESG covers more than environmental issues – it also relates to employment rights and diversity," she said.

An interesting ecosystem of information is emerging, as buyers ask suppliers for their green credentials, Delargy explained. Similarly, an investor who wants to assess their exposure to ESG risks in their portfolio will ask for information. "It becomes a virtuous cycle of everybody asking: 'What are you doing on this agenda?' Pressure from all sides – that's how the change will come," she said.

The critical success factors for businesses are changing, and moving beyond financial fundamentals. "The increase in importance of ESG factors has been pretty astronomical," Delargy said. These factors are sometimes termed 'non-financial information' and can have a very direct impact on company performance. Firms that are well covered in terms of ESG can be profitable and can have better staff retention, she suggested.

Caroline Dee-Brown (chair of the In-house and Public Sector Committee)

Hot topic

And the push for change can also come from inside an organisation. Recently, McKinsey employees sent a letter to their partners, urging them to disclose how much carbon their clients were emitting, though the consultancy firm's own footprint may be minuscule.

Climate change is the hot topic in ESG – literally – but the response to climate change includes both decarbonisation and climate adaptation – that is, building systems that are resilient in the face of rising temperatures. Carbon footprinting is about calculating an organisation's greenhouse gas emissions, but looking 'under the hood' to examine how these emissions are created is also important, Delargy suggested. Organisations must first look to avoid emissions altogether, then to reduce them. Carbon offsets are a last resort

PIC: SHUTTERSTOCK

to balance out emissions that are unavoidable.

Furthermore, meaningful action on climate change must include biodiversity, she said. This means recognising that nature is our life-support system, and working to ensure that nature loss is halted and reversed.

Ireland must also move from a linear to a circular economy, away from the 'make, take and dispose' model and towards a 'make, take and re-make' approach, keeping raw materials in the system for as long as possible.

Circular economy

For companies that manufacture products, this means thinking about the product life cycle at the design stage so that, if one part breaks, the entire item does not have to be discarded. "Ireland is starting from a low base on the circular economy – we have a circularity rate of 1.6% where the EU average is 12%," said Delargy.

The role of in-house counsel in managing all of these concerns is tough, because it's impossible for any one person to be expert in all of these complex areas, she said. A culture of collaboration and continuous learning within and outside the company is required. "Transparency is the currency of ESG," she said, with an increasing set of disclosure requirements for business leaders.

The *Corporate Sustainability Reporting Directive*, among other regulations, will push companies towards disclosing their climate and nature-related risks and opportunities. This directive will apply to all companies larger than 250 employees and will mandate for ESG information in annual reports.

Non-financial reporting

"Non-financial reporting is being put on a level playing field with financial reporting in the annual report," she commented. That will require new systems and processes to gather data that the in-house counsel will have to control and oversee.

On the upside, there is a huge drive towards harmonisation across the EU, with consolidation in reporting standards and frameworks. The vast investment and policy package that is the EU Green Deal will be the engine of much development in this arena, Delargy said.

'Evangelical' chief executive

In-house and Public Sector Committee chair Caroline Dee Brown introduced solicitor Conor Keeling of AIB, where he recently established a sustainability legal team.

Younger employees, generally, are very focused on their company's purpose and its contribution to society, Keeling said, and sustainability can offer a positive focus for an organisation, he suggested.

Keeling said that AIB's chief executive Colin Hunt is "evangelical" about ESG. AIB has a sustainability unit of 15 people, but this is only the tip of the iceberg for the organisation, which has set a 2030 net zero target for its own operations, he continued. "Incremental change isn't going to do it," Keeling commented, adding that enormous effort was going into setting a pathway to achieve these ambitious commitments.

Hunt recently declared that the green transition was the biggest opportunity in the history of global banking. "As well as being the right thing to do, it is also an enormous commercial opportunity for AIB as a bank," Keeling said, which is why such large resources have been dedicated to it. "It's a major area of focus for our shareholders and investors … with a huge level of scrutiny on ESG issues," he added. Bank analysts were now grilling companies on their ESG performance, he noted. "ESG is not a fad, it's here to stay," Keeling said.

In-house lawyers will have to scale up significantly in this area, he added, because corporate preparedness for the wave of ESG regulation that will land soon is not currently in a good state. A KPMG study has indicated that only 2% of in-scope Irish companies are approaching readiness for the implementation of the *Corporate Sustainability Reporting Directive*, which is likely to drive an enormous amount of change in corporate life.

Enormous change ahead

Solicitor Michael Barrett (legal manager at the Commission for Regulation of Utilities) said that enormous change lay ahead in how Irish society would develop and operate.

The tragedy of the invasion of Ukraine has prompted an acceleration in the green transition at a European level, Barrett noted, with the EU beginning to wean itself off Russian oil and gas with the REPowerEU plan.

Speeding up permit procedures for wind and solar energy will be an important part of this process, he said. However, he warned that, in this complex area, there is "much scope for spoofery". While open minds and ambition remain important, energy customers must try to avoid greenwashing, with processes that ultimately don't generate any extra renewable electricity, he said.

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9 Nov	General Practice Update Kilkenny 2022	Hotel Kilkenny, Kilkenny, Co Kilkenny
17 Nov	Connaught Solicitors' Symposium 2022	Breaffy House Hotel, Castlebar, Co Mayo
24 Nov	Practitioner Update Cork 2022	Kingsley Hotel, Cork, Co Cork
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26 July	**Handling Difficult Conversations for Managers** Law Society of Ireland, Blackhall Place, Dublin	3 Management & Professional Development Skills (by Group Study)	€135	€160
1 Sept	**Project Management** Law Society of Ireland, Blackhall Place, Dublin	5.5 Management & Professional Development Skills (by Group Study)	€160	€185
8 Sept	**Effective Communications Skills Workshop** Law Society of Ireland, Blackhall Place, Dublin	3.5 Management & Professional Development Skills (by Group Study)	€160	€185
30 Sept	**Employment Law Masterclass:** A practical guide to new developments. Law Society of Ireland, Dublin	6 General(by Group Study)	€210	€255
6 Oct	**Younger Members Annual Seminar** Law Society of Ireland, Dublin	1.5 Management & Professional Development Skills (Group Study)	Complimentary	
	ONLINE			
13 July	**Assisted Decision Making (Capacity) Act 2015 – implications for practitioners.** Live Webinar	3 General (by eLearning)	€160	€185
21 Sept	**Digital Upskilling – Excel Level 1** Online	6 Management & Professional Development Skills (by eLearning)	€160	€185
29 Sept	**Business Law Update 2022** Live Webinar	3.5 General (by eLearning)	€160	€185
12 Oct	**In-house and Public Sector Annual Conference** Live Webinar	2.5 General and 1 Management & Professional Development Skills (by eLearning)	€160	€185
Available now	**International Arbitration in Ireland** Online, On-Demand	1.5 General (by eLearning)	Complimentary	
TBC	**The Arbitration Agreement - Procedure and Practice** Online, On-Demand	2 General (by eLearning)	€135	€160

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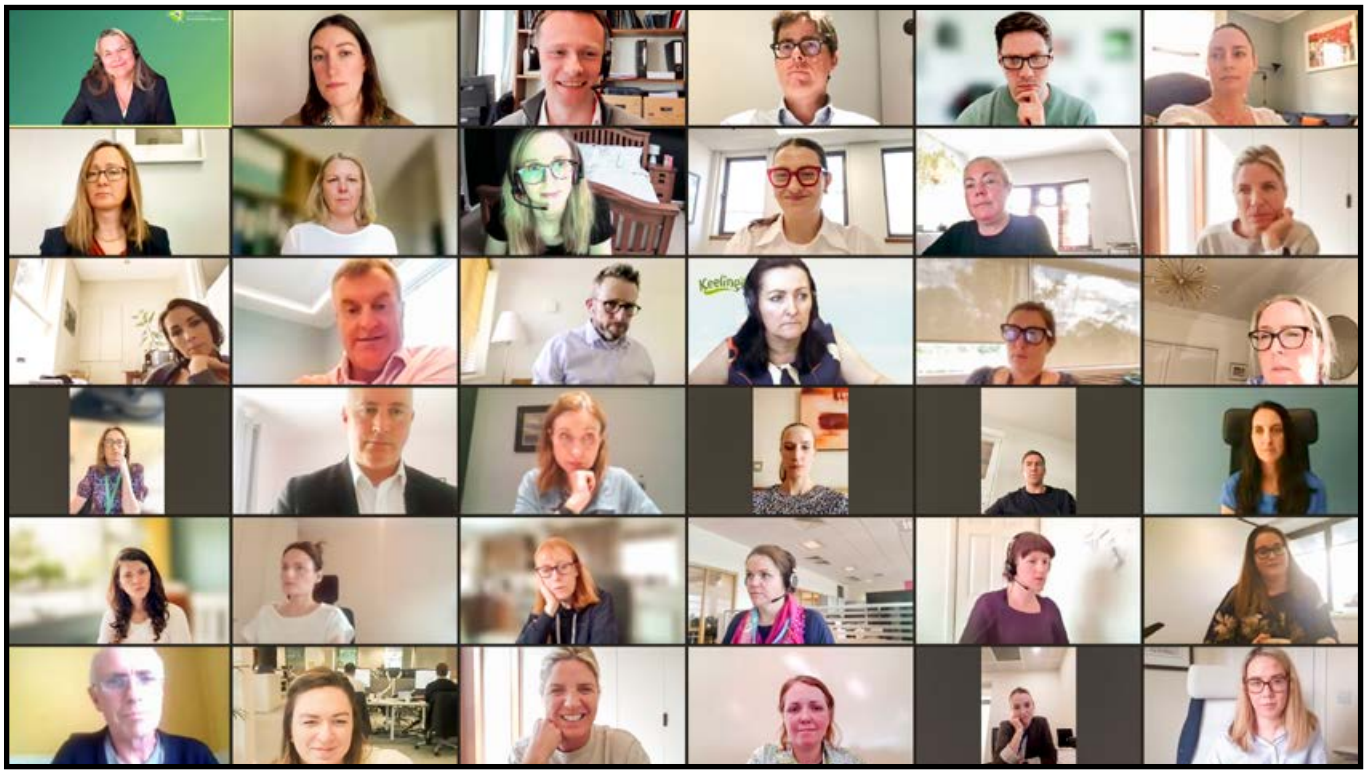


Regulators have an important role in getting the balance right, he said, to make sure that investors are protected, but also to ensure that old ways of thinking don't block innovation.

Under REPowerEU, solar-panel installation may become mandatory on all new public and commercial buildings, with more aggressive promotion and greater incentives for domestic installation.

Transition challenges

"Another part of the plan is to accelerate the production of hydrogen, with €200 million set aside for research and a swift approval process for projects," he said. The west coast of Ireland presents an enormous opportunity from offshore wind and hydrogen generation, he added, but work must be done on harmonising standards on how hydrogen can be exported and circulated around Europe.

The dominance of oil and gas will be turned on its head, with renewable-energy producers likely to become household names, he said. There will be ESG challenges in the transition period, however. For example, batteries for renewable technology require rare precious metals that are still mined and processed in ways that may not meet investors ESG standards, he commented.

Likewise, even as the EU stops buying Russian gas, this key transition fuel may be sourced in countries with questionable human-rights records.

The challenges that the world is facing provide an opportunity for an energy-efficiency movement similar to that spurred by the oil crisis in the 1970s, he said. "The greenest electron is the one that never has to be produced," he said, urging efficient demand-and-use strategies, in line with grid capacity.

Sustainability goals

C&C's Susan Murray and Lucy Maxwell (senior legal counsel and senior assistant company secretary) said that, as a leading drinks distributor, sustainability was at the core of their business.

Both spoke about the importance of honeybees, and how the business has installed the largest rooftop solar-panel farm in Ireland at the Clonmel site, which will reduce the site's carbon emissions by 4%. Plastic is no longer used in the packaging of C&C Group's canned products at the manufacturing site.

Maxwell explained that a board-approved ESG committee was established in 2020, which is responsible for defining strategy. This year, the focus has been on the implementation of the Task Force on Climate-related Financial Disclosures and accelerating efforts to mitigate climate-change risks.

To reflect the company's ongoing commitment to ESG, an environmental-performance target was included in the executives' long-term incentive award. "Companies need to ensure they are not just paying lip service to ESG performance," she said.

'Snake-oil merchants'

McCann FitzGerald partner Brendan Slattery, who is head of the firm's environment and planning group, said that it was important to ask questions in the context of ESG: "There are a lot of snake-oil merchants out there," he commented, "and now is the time to flush out the spoofers." Assume nothing, he advised. "Always ask if something doesn't make sense – and how relevant it is to the business."

External service providers, such as lawyers and consultants, should be adding value in this area, he suggested. While ESG has been viewed as a compliance area – "and it makes sense that lawyers have to touch it" – its influence will extend across the entire value chain, he said.

ESG was a significant issue in terms of reputation and competitive advantage, he added. Recent climate litigation encouraged the discipline of thinking about the issue, and documenting how that has been achieved.

"Respect for ESG can only improve resilience," he concluded. g

Mary Hallissey is a journalist with the Law Society Gazette.

Vertical limit

In early May, the European Commission adopted revised competition rules regarding contracts containing supply or distribution arrangements for goods or services. Cormac Little explains

THE MOST SIGNIFICANT CHANGES IN THE 2022 VBER RELATE TO DUAL DISTRIBUTION, 'MOST FAVOURED NATION' OR MFN CLAUSES, ACTIVE SALES RESTRICTIONS, AND CERTAIN INDIRECT MEASURES RESTRICTING ONLINE SALES

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

The new EU regime on 'vertical agreements' entered into force on 1 June 2022. This reform represents the culmination of an extensive review process lasting four years, involving engagement with third parties regarding the operation of the relevant EU block-exemption/safe-harbour regime adopted by the commission in 2010.

The purpose of the new rules is to help businesses navigate a commercial environment that has been significantly altered by the growth of e-commerce. Mindful of these trading developments, coupled with enforcement experience throughout the EU, the new regime brings certain provisions within the safe harbour, but other arrangements now fall outside.

The new rules are primarily contained in a new EU block exemption for vertical agreements, namely, *Commission Regulation 2022/720* (the 2022 VBER). This law is accompanied by new *Guidelines on Vertical Restraints*. Both texts were adopted by the commission on 10 May 2022. The 2022 guidelines provide guidance on the provisions contained in the 2022 VBER, as well as practical examples to help businesses determine whether their vertical agreements are enforceable under EU competition law.

Touching the void

The relevant EU competition rules regarding arrangements between two or more undertakings, such as vertical agreements, are contained in article 101 of the *Treaty on the Functioning of the European Union*. Article 101(1) prohibits and renders void anti-competitive arrangements between two or more undertakings that affect trade between EU member states. However, arrangements that infringe article 101(1) may be exempted under article 101(3) if, applying four separate criteria, they are more pro-competitive than anti-competitive. If an agreement benefits from an exemption, it is lawful and enforceable.

To ease the compliance burden on businesses throughout the EU, the commission has adopted various laws (commonly referred to as block exemptions) whose purpose is to define categories of agreements that can be assumed with sufficient certainty to fulfil the four criteria contained in article 101(3), therefore exempting those arrangements from the prohibition contained in article 101(1). The rationale behind the 2022 VBER (and its predecessors) is that, while vertical agreements may stimulate inter-brand competition, they also carry competition risks by increasing barriers to entry, softening intra-brand competition, and facilitating horizontal (that is, at the same level of the supply chain) collusion.

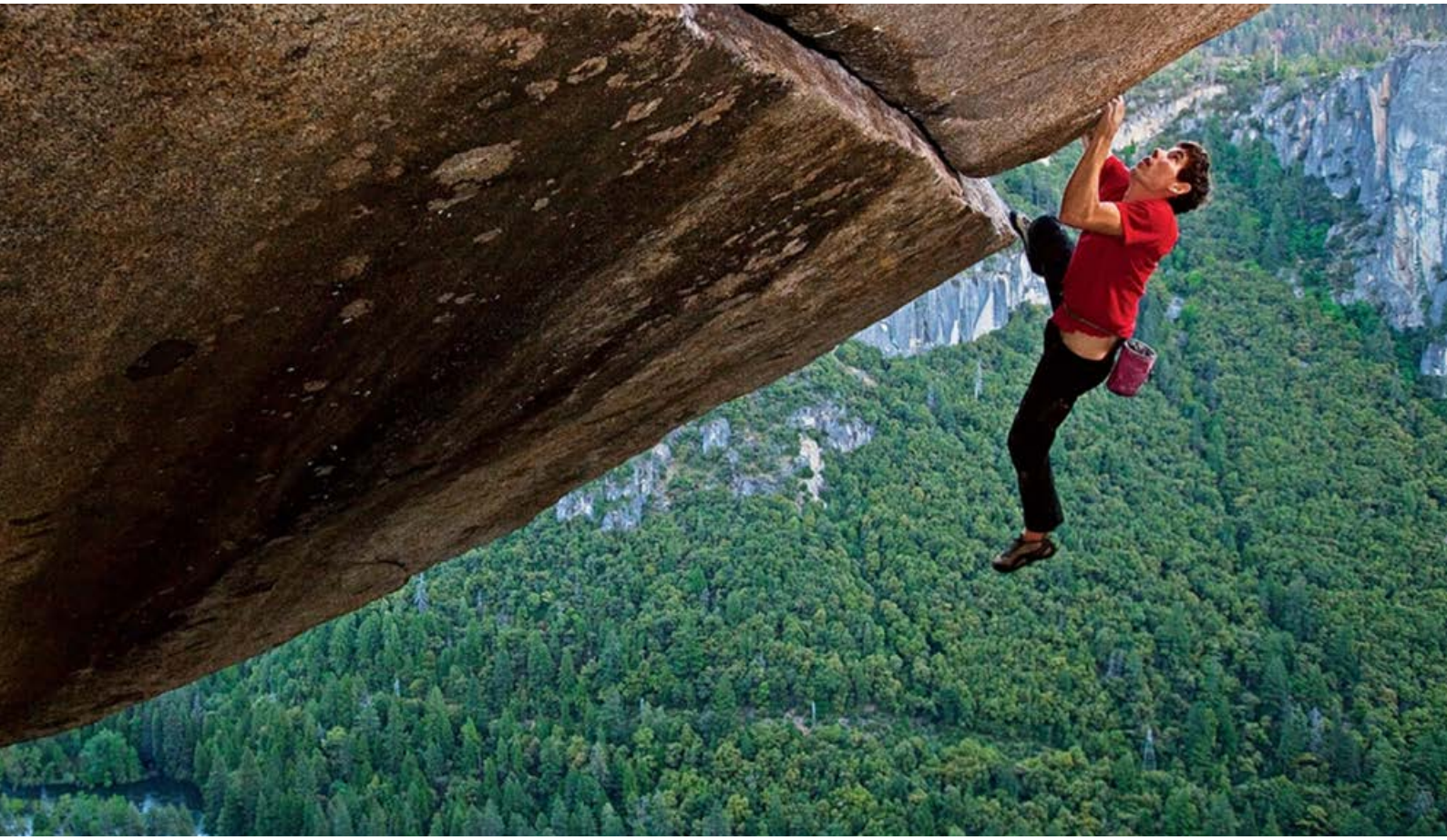
Businesses operating in the European Economic Area must engage in a three-step process to self-assess whether their vertical agreements comply with article 101:

- Assess whether the relevant contract has the object or effect of restricting competition within the meaning of article 101(1),
- If so, ascertain whether the relevant agreement satisfies the provisions of the 2022 VBER/2022 guidelines,
- If not, consider whether the contract in question is otherwise exempted under article 101(3).

Alive

While the 2022 VBER does, as mentioned above, include some significant reforms, the new law continues to provide for an exemption from article 101(3) for arrangements between suppliers and purchasers, provided certain conditions are met.

Indeed, the 2022 VBER contains the same market-share threshold. Accordingly, contracts between suppliers and buyers may qualify for the safe harbour, provided their respective most recent annual market shares are no more than 30%. As with its predecessor, the VBER includes a series of hardcore restrictions that lead to the entire agreement falling



outside article 101(3). Certain hardcore restrictions remain unchanged – for instance, resale price maintenance is still banned.

The VBER also continues to contain a list of various excluded clauses that require self-assessment as to whether an individual exemption might apply.

For example, the relevant parties should continue to decide themselves whether a non-compete obligation of longer than five years is enforceable.

The Eiger sanction

As stated above, the commission, before adopting the new rules, completed a thorough evaluation of the operation of the 2010 regime. Although this process found that the overall impact of these rules had been positive, the commission decided that it was appropriate to adjust the scope of the safe harbour to ensure that it is neither too generous nor too narrow. Put another way, the consultation found that certain contracts, which could not be assumed with sufficient certainty to fulfil the quartet of cumulative article 101(3) criteria, were benefiting from the block exemption. These agreements are known as 'false positives'.

By contrast, the commission learned that certain vertical provisions, falling outside the scope of the safe harbour, could, nevertheless, be assumed with sufficient certainty to fulfil the conditions of article 101(3). These agreements are known as 'false negatives'.

The most significant changes in the 2022 VBER thus relate to the following – the first two are seen as false positives, whereas the latter pair are seen as false negatives:

- Dual distribution,
- 'Most favoured nation' or MFN clauses,
- Active sales restrictions, and
- Certain indirect measures restricting online sales.

Dual distribution means a situation where a supplier sells goods and services both through independent distributors and directly to customers, making the supplier a competitor of its distributors. While distribution agreements between business rivals are generally excluded from the safe harbour, the 2010 rules did exempt a non-reciprocal vertical agreement where the manufacturer and the distributor only compete at the downstream level, but not at the upstream level.

The commission was concerned that this provision might allow for the exchange of competitively sensitive information between competitors. Therefore, under the 2022 VBER, any information exchange in a dual-distribution scenario between a supplier and a buyer now falls outside the safe harbour where it:

- Is not directly related to the implementation of the vertical agreement, or
- Is not necessary to improve the production or distribution of the contract goods or services.

MFN clauses, also known as parity obligations, require a seller to offer goods/services

LAW SOCIETY OF IRELAND

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to a buyer on conditions no less favourable than those the same seller offers to another buyer through other sales/marketing channels (such as this supplier's own website). As the 2010 regime did not specifically address parity obligations, all types of such clauses were block exempted.

That said, in the intervening period, MFN clauses, particularly regarding online travel bookings by consumers, became the subject of various competition investigations/enforcement action throughout the EU (including in Ireland). This led to the distinction between wide retail/cross-platform MFNs and narrow MFNs. The former category restricts suppliers from offering more favourable terms on all of their sales channels plus any rival online platforms, whereas the latter prevents a supplier from offering better terms on its own website but does allow it to offer more favourable conditions on rival channels (including third party websites). Under the 2022 VBER, all MFNs benefit from the safe harbour, with the exception of cross-platform parity obligations.

Active sales restrictions are limitations on a buyer's ability to approach individual customers directly. Such clauses were identified by the commission as an example of false negatives that should be covered by the safe harbour. The 2010 regime contained narrow exceptions, whereby only active sales restrictions imposed by a supplier on the buyer fell within the safe harbour (and not on customers of the buyer). The evidence gathered during the review of the 2010 rules also indicated that certain aspects of the rules on active sales restrictions limited suppliers in designing their distribution systems according to their business needs.

The 2022 guidelines thus provide a clearer definition of so-called 'active sales' and 'active sales restrictions', thus extending the scope of the safe harbour. Active sales include targeting customers via direct communication, price comparison services, or advertising on search engines targeting customers in particular territories, etc. In addition, a supplier, under the 2022 VBER, may now compel its distributors to pass on active sales limitations to their respective customers.

Certain indirect measures restricting online sales: another potential false negative addressed by the commission related to e-commerce. The review of the 2010 VBER showed that the development of online sales has been such that they no longer require special protection relative to offline sales. Under the 2022 VBER, dual pricing (that is, charging the distributor a higher wholesale price for products to be sold offline than for those to be marketed on the internet) is no longer a hardcore restriction. Accordingly, suppliers may apply different wholesale prices to online and offline sales to encourage or reward investment.

Although there is no requirement for suppliers to perform comprehensive cost calculations or share detailed cost information, the different wholesale rates must be reasonably related to cost or investment disparities between the online and offline sales channels. That said, certain conditions apply to dual pricing or else the safe harbour does not apply. Specifically, the difference in wholesale prices for online and offline sales should not be used to limit cross-border trade or inhibit the buyer from making proper use of the internet. While the parties are allowed to create a system that allows them to execute dual pricing efficiently, any such mechanism should not limit the number of products the buyer can offer online.

Separately, the imposition by suppliers of other varying criteria for online and offline sales is also no longer treated as a hardcore restriction.

The climb

The 2022 VBER aims to harmonise the approach to online restrictions across the EU. The new rules provide that any restrictions on online sales constitute a hardcore restriction where they prevent buyers or their customers from effectively using the internet to sell the relevant goods or services, including any attempt to prevent the general use of one or more online advertising channels (such as a search engine or price-comparison website).

The 2022 guidelines expand on the 2022 VBER, providing that arrangements such as requiring the buyer to sell the relevant products in a 'bricks-and-mortar' store only, obliging the buyer to seek the supplier's permission before making an online sale, and prohibiting the buyer from establishing/operating an online store are all hardcore restrictions.

The 2022 guidelines also seek to address the distinction between online passive and active sales. For example, a sales website is an example for the former. However, translating that website into a language not commonly used in the territory of the distributor is a form of the latter. For example, if a French distributor had an English-language website, this would be seen as a form of active selling.

Free solo

The 2022 VBER and 2022 guidelines largely achieve their joint aim of providing entities doing business in the European Economic Area with simpler, clearer, more up-to-date rules, thereby enhancing legal certainty and making it easier for them (and their legal advisors) to decide whether their respective proposed cross-border contracts are likely to be enforceable.

It remains to be seen whether the Competition and Consumer Protection Commission will follow the approach of the European Commission, given that the Irish regime on vertical agreements is currently due to expire at end of this year. That said, EU law has primacy over national law so, if necessary, businesses would be well-advised to adapt their vertical agreements to the new EU rules prior to the end of the transitional period on 31 May 2023. g

Cormac Little SC is partner and head of the competition and regulation unit of William Fry LLP. He is chair of the Law Society's EU and International Affairs Committee.

LOOK IT UP

LEGISLATION:

- Commission Regulation 2022/720 on the application of article 101(3) of the *Treaty on the Functioning of the EU* to categories of vertical agreements and concerted practices (the 2022 VBER)
- *Treaty on the Functioning of the European Union*, article 101
- *Guidelines on Vertical Restraints* (10 May 2022)

REPORT OF LAW SOCIETY COUNCIL MEETINGS
29 APRIL AND 27 MAY 2022

Assisted Decision-Making (Capacity) Act

Áine Hynes, chair of the Mental Health Law and Capacity Task Force, reported to the Council on the need for phased implementation of the *Assisted Decision-Making (Capacity) Act 2015*, which was necessary to avoid a number of undesirable outcomes.

One such concern related to an April 2022 decision that the Office of Wards of Court would cease accepting wardship applications in advance of enactment, which immediately created a legislative lacuna, during which practitioners would be restricted in terms of legal recourse for clients who lacked capacity.

Following extensive engagement with relevant stakeholders, it was agreed to recommence accepting wardship applications, so that any such applications that are in being on commencement of the 2015 act will be provided for via transitional arrangements.

Personal Injuries Resolution Board Bill

Stuart Gilhooly reported on a recent meeting between the Oireachtas Committee on Enterprise, Trade and Employment and representatives of Insurance Ireland and the Alliance for Insurance Reform to discuss the general scheme of the *Personal Injuries Resolution Board Bill*. He confirmed that the Society would correspond further with the committee in order to present the views of members.

Law Society of Northern Ireland

The Council was pleased to welcome representatives from the Law Society of Northern Ireland – Brigid Napier (president), Rowan White (senior vice-president), Brian Archer (junior vice-president), and David Lavery (chief executive) – to the May Council meeting and annual dinner.

Invasion of Ukraine

- Sanctions Resource Hub – the president reported that a hub had been launched to provide practitioners with resources to assist compliance with sanctions,
- Webinar – the president had hosted a webinar on the issue alongside CCBE President James MacGuill, Council member Gary Lee, and a leading Ukrainian solicitor, Yulia Kyrpa, who had spoken of her recent experience of the effect of the invasion,
- Quiz and book sale – the Society's EU and International Affairs Committee recently organised a quiz, and a book sale had been held – both in aid of the Irish Red Cross Ukraine Crisis Appeal,
- Assisting Ukrainian lawyers – the chair of the Education Committee, Richard Hammond, explained that, while the committee was positively disposed towards assisting displaced Ukrainian lawyers in any way possible, it was proving difficult to find a path to qualification (other than through the normal process), as Ukraine is a non-EU civil-law jurisdiction.

Finance

Committee chair Paul Keane reported to the Council on various matters that included management accounts for 2022, the 2021 audited financial statements (and report to members on same), and internal audit.

Complaints and Client Relations

Committee chair Flor McCarthy reported that two scheduled meetings remained in the lifespan of the committee, which were scheduled to be held in July and September 2022.

PII

Professional Indemnity Insurance Committee member Flor McCarthy reported that initial feedback from insurers for the 2022/23 market was positive, that current opinion was that the market was stabilising, and that focus remained on attracting new insurers to the market, with particular emphasis on those interested in smaller firms.

Education

Committee chair Richard Hammond reported on issues, including:

- New Professional Practice Course – a conference was held in June to share information on the new course and gather ideas for its continued enhancement,
- Disability and inclusion policy – the committee approved a new policy for all courses and exams offered by the Society, and a disability audit of teaching spaces would be conducted,
- Continuing professional development – work was ongoing on the CPD review and the development of a draft competence framework for the profession,
- Diploma Centre Award – the Diploma Centre has won the Best Further Education Provider Award at the Education Awards 2022. g

SOLICITORS DISCIPLINARY TRIBUNAL

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

● **In the matter of Barry Sheehan, a solicitor practising as Barry Sheehan Solicitors at 26 Marlboro Street, Cork, and in the matter of the *Solicitors Acts 1954-2015* [2014/DT113]**

Bernard Bingham and Viola Bingham (applicants)

Barry Sheehan (respondent solicitor)

On 5 July 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct, in that he abused his position by threatening to destroy the entire file unless the applicants settle his alleged bill of costs, despite a Circuit Court order dismissing his claim.

The tribunal ordered that the respondent solicitor:

1) Be censured,
2) Pay a sum of €5,000 to the compensation fund within 21 days of the perfection of its decision,
3) Pay to the applicants, in respect of their attendance before the tribunal, a sum of €750, to be taxed in default of agreement.

Note: The publication of this notice was delayed pending the determination of related appeals.

LAW SOCIETY OF IRELAND

APPOINTMENTS TO THE SOLICITORS DISCIPLINARY TRIBUNAL

The **Solicitors Disciplinary Tribunal** is an independent statutory tribunal appointed by the President of the High Court to consider complaints of misconduct against solicitors. The Tribunal consists of up to 20 solicitor members and ten lay members. It sits in divisions of three, each comprising two solicitor members and one lay member. The website for the Solicitors Disciplinary Tribunal may be accessed at **www.distrib.ie**.

The Solicitors Disciplinary Tribunal remains in operation to hear inquiries into allegations of misconduct by solicitors in relation to matters already in progress when the Legal Services Regulatory Authority's complaints function was commenced. The Solicitors Disciplinary Tribunal will remain operational until such time as these inquiries have concluded.

The Society is inviting expressions of interest from suitably qualified solicitors for appointment as a solicitor of the Solicitors Disciplinary Tribunal. Appointments of solicitor members are made by the President of the High Court on the basis of nominations by the Society. Prior to nominating any applicant for appointment to this position, the Society will make all such enquiries as are deemed necessary to determine the suitability of that applicant. Applicants must not canvass any person or interfere with or compromise the process in any way. The appointments will be for a period not exceeding five years. In order to be eligible for appointment to the Solicitors Disciplinary Tribunal, solicitors must have not less than ten years' standing as practising solicitors. A daily fee is paid to participating members of the Tribunal on the days that it sits.

Solicitors who meet the criteria and are interested in seeking appointment to the Solicitors Disciplinary Tribunal should send a CV of no more than 600 words by email to regulation@lawsociety.ie with the subject line of the email clearly stating 'Application for appointment to the Solicitors Disciplinary Tribunal'.

Applications should be received on or before close of business on **29 July 2022.**

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WILLS

Barrett, Katherine (née Flanagan) (deceased), late of Somerville, Ratoath, Co Meath, who died on 10 April 2022. Would any person having an interest in the estate of the above-named deceased please contact the executor, Finuala Flanagan Barrett, email: finualaflanagan@gmail.com

Byrne, Mary (otherwise Maura) (deceased), late of 68 Ferndale Avenue, Dublin 11, who died on 27 May 2022. Would any person having knowledge of a will made by above-named deceased please contact Eoin Clarke & Co, Solicitors, Mullingar Shopping Centre, Ashe Road, Mullingar, Co Westmeath; DX35001 Mullingar; tel: 044 933 4565, email: eoin@clarkesolicitors.ie

Crowe, John (deceased), late of 31 Lindsay Road, Glasnevin, Dublin 9, who died on 18 December 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Pendred & Co, Solicitors, 2 Ballycasey Park, Shannon, Co Clare; email: info@pendredsolicitors.ie

D'Arcy, Thomas (deceased), late of Golf Links Road, Castletroy, Limerick, who died on 24 July 1989. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Kenneth Deale & Co, Solicitors; tel: 01 231 4600, email: dealesolr@gmail.com

Hassett, Padraic (deceased), late of Woodend, Ballinagee, Enniskerry, Co Wicklow, who died on 4 April 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Frank Walsh & Co, Solicitors, Rectory View, Church Hill, Enniskerry, Co Wicklow; tel: 01 286 6400, email: frank@frankwalshsolicitors.com

Kavanagh, Robert (deceased), late of Kilmolin, Enniskerry, Co Wicklow, who died on 30 September 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Frank Walsh & Co, Solicitors, Rectory View, Church Hill, Enniskerry, Co Wicklow; tel: 01 286 6400, email: frank@frankwalshsolicitors.com

Lyons, Bernadette (deceased), late of 96 Clusker Park, Navan, Co Meath, who died on 7 June 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Deborah Leonard, Paul Brady & Co, Solicitors LLP, 3 Railway Street, Navan, Co Meath, C15 Y682; tel: 046 902 8011, fax: 046 902 3983, email: dleonard@paulbradysolicitors.ie

Mulhern, Patrick (Paddy) (deceased), late of Passage, Athleague, Co Roscommon, who died on 24 January 2022. Would any person having knowledge of any will made by the above-named deceased please contact Padraig Kelly Solicitors, Strokestown, Co Roscommon, quoting ref M/2/22; tel: 071 963 3666, email: info@pksolrs.ie

O'Carroll, Norman (deceased), late of 15 Ashfield Avenue, Ranelagh, Dublin 6, who died on 27 January 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Branigan & Matthews, Solicitors, 33 Laurence Street, Drogheda, Co Louth; DX 23002; tel: 041 983 8726, email: estella@branmatt.ie

Tierney, Bridget (Bridie) (deceased), late of Lisduff, Virginia, Co Cavan, who died on 28 January 2022. Would any person having knowledge of a will made by the above-named deceased please contact Patrick J Carolan Solicitors, Thomas Street, Bailieborough, Co Cavan; DX 176001 Bailieborough; tel: 042 966 5377, email: info@pjcarolan.com

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for Aug/Sept *Gazette*: 12 August 2022.**

No recruitment advertisements will be published that include references to ranges of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice that indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

TITLE DEEDS

Landlord and Tenant (Ground Rents) Acts 1967-2019 – take notice that we, Elizabeth Deane and Judy Deane, persons entitled under the above acts, intend to apply to the county registrar for the county of Cork to acquire the fee simple and any other interests, superior to our own, in that property known as 171 Old Youghal Road, in the city of Cork. Let any person having or claiming to own the freehold or any other interest in said property contact our solicitors, Finbarr Murphy & Co, Solicitors; tel: 021 427 3472

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of premises at Charlotte Street (formerly Colbert Street), Wexford

Take notice that any person having an interest in the freehold estate of the property known as Charlotte Street (formerly Colbert Street), Wexford, being the property more particularly assigned by deed of

conveyance and assignment dated 23 December 1980 and made between John James Donohoe, Thomas O'Rourke, Thomas Kelly and William Murphy of the one part, and Thomas K Donnelly of the other part.

Take notice that the Frederick Ozanam Trust (Incorporated) intends to submit an application to the county registrar for the county and town of Wexford for the acquisition of the freehold interest and/or any intermediate interest in the aforementioned property, and any party asserting that they hold the freehold or any intermediate interest in the aforementioned property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests, including the freehold reversion, to the aforementioned property is unknown or unascertained.

Date: 1 July 2022
Signed: MJ O'Connor LLP (solicitors for the applicant), Drinagh, Wexford

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application to the county registrar of Galway under the said acts to buy out the freehold application of Carol Casey and Ian Stewart as legal personal representatives of Thomas Stewart property at Shop Street, Galway

Any person having any interest in the freehold estate of the following property: all that and those the premises on Shop Street in the city of Galway, adjoining the wall of St Nicholas Church Yard, known as the 'Arcades', 28-32 Shop Street, Galway, which property was subject to a lease dated 3 February 1881 between Galway Town Improvement Commissioners to Peter McDonald for a term of 75 years from 29 September 1880, and a reversionary lease dated 13 October 1955 and made between the Mayor, Alderman and Burgesses of Borough of Galway and Thomas Stewart of for a term of 99 years from 29 September 1955, subject to the yearly rent of £75.

Take notice that Carol Casey and Ian Stewart, being the legal personal representatives of the above-named Thomas Stewart and being persons entitled under the above entitled acts, propose to purchase the fee simple in the lands described in paragraph 1 hereof, and for that purpose intend to submit an application to the county registrar for the city of Galway for acquisition of the freehold interest in the aforesaid property. Any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of the title to the aforementioned premises to the solicitors for the applicants below named within 21 days from the date of this notice.

In default of any such notice being received, Carol Casey and Ian Stewart, as legal personal representatives of the above-named Thomas Stewart, intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Galway for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 1 July 2022
Signed: Patrick F O'Reilly & Company (solicitor for the applicant), 9/10 South Great George's Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Dorset Propco Limited and in the matter of the property: all that and those the property at the rear of 43 Lower Dorset Street in the city of Dublin

Take notice that any person having any interest in the freehold estate and any intermediate interests in the property at the rear of 43 Lower Dorset Street in the city of Dublin, held under a lease dated 19 April 1883 between Charles Corbet of the one part and James Forrester of the other part (the lease) and described therein as "all that and those that piece or plot of ground particularly shown on the map thereof in the margin of these presents, which said piece or plot of ground contains in front thereof to lane at rear of Lower Dorset Street 43 feet, 6 inches, from front to rear on both sides, 50 feet, and at the rear 38 feet, bounded on the north by laneway at the rear of Belvedere Road, on the south and east by a plot demised to Michael Moran, and on the west by a laneway at the rear of Lower Dorset Street, be the same admeasurements more or less, all which said premises are situate in the parish of St George and city of Dublin, together with all rights of way to proposed laneways above mentioned, members and appurtenances thereunto belonging on in any way appertaining" for a term of 490 years from 1 May 1883 at the annual rent of £4 sterling and subject to the covenants and conditions therein contained.

Take notice that Dorset Propco Limited (the applicant), being the person entitled to the interest of the lessee under the lease, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are hereupon called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 1 July 2022
Signed: Mason Hayes & Curran (solicitors for the applicant), South Bank House, Barrow Street, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by James O'Reilly, c/o BHK Solicitors, 1 Washington Street West, Centre, in the city of Cork

Any person having any interest in the freehold estate and/or intermediate estates in the following property: the premises situate at and known as 31 Windsor Avenue, Fairview, Dublin, as more particularly described in the head lease dated 9 February 1897 between

Richard Dawson and Mary Jane Love and/or the indenture of sublease dated 4 July 1904 between Mary Jane Love of the one part and Catherine Muldowney of the other part.

Take notice that James O'Reilly intends to submit an application to the county registrar for Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid are called upon to furnish evidence of the title to the aforementioned premises to the below named. Such person or persons who are entitled to the interest of the said Richard Dawson of the one part and Mary Jane Love of the other part and/or in the sublease between Mary Jane Love and Catherine Muldowney of the other part whereby, *inter alia*, the aforementioned property was demised unto the said Catherine Muldowney for a term of 174 years from 29 September 1903, subject to a yearly rent of £3.34p, thereby reserved, and subject to the covenants and conditions therein contained. Any person or persons who are entitled to the grantor's interests in the lease aforesaid or those holding superior title should provide evidence to the applicant within a period of 21 days of the date of this notice.

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

Date: 1 July 2022

Signed: BHK (solicitors for the applicant), 1 Washington Street West, Centre, Cork

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Martina Investments Limited, a company incorporated in Guernsey, having its registered office at Old Mill House, Old Mill Road, St Martin, Guernsey, GY4 6DB, and registered in Ireland under company number 908077, having its registered place of business in Ireland at Bohan Solicitors, Suite A19, Bracetown Business Park, Dublin 15, D15 YDC1, in respect of the premises, lands, and hereditaments known 38 Princes Street, Cork City, Co Cork

Any person having any interest in the freehold estate or any immediate interests in the following property: the premises, lands, and hereditaments known as 38 Princes Street, Cork City, Co Cork, held under an indenture of lease dated 31 July 1952 between (1) Richard Wood and Benjamin Ussher Wood, and (2) Rose Brothers Limited (registry of deeds serial number 1952050034) for a term of 99 years from 1 January 1950, subject to the yearly rent thereby reserved of IR£80 and to the covenants and conditions on the part of the lessee therein contained, and being described in the said lease as "all that and those the dwellinghouse, shop and premises known as 38 Princes Street, situate in the parish of Holy Trinity in the city of Cork, and more particularly delineated and described on the map or plan hereon endorsed and thereon coloured red, to hold the premises hereby demised unto the lessees from the first day of January 1950 for the term of 99 years, paying thereof yearly during the said term, hereby granted the rent of £80, to be paid without any deduction except for landlord's property tax by equal half yearly payments on the first day of July and the first day of January in every year". Take notice that Martina Investments Limited (the applicant), being the party now holding the lands and now entitled to the lessee's interest under the said lease by virtue of a deed of assignment dated 31 March 1977 between (1) the Camden Estates Limited, (2) Herbert Bradbury, and (3) the applicant (registry of deeds serial number 1979015135), intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and any intermediate interest(s) in the aforesaid lands, and any party asserting that they hold a superior interest in the aforesaid lands (or any of them) are called upon to furnish evidence of the title to the aforesaid lands to the below named within 21 days from the date of this notice.

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

Date: 1 July 2022

Signed: Bohan Solicitors (solicitors for the applicant), Suite A19, Bracetown Business Park, Dublin 15, D15 YDC1

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Lucy Yeates: premises situate at 53 High Street, in the city of Kilkenny

Any person having an interest in the freehold or intermediate estates in the above property take notice that Lucy Yeates intends to submit an application to the county registrar of the county of Kilkenny for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named. In particular, any persons having any interests in a lease of 9 October 1929 made between the Right Reverend John Godfrey Fitzmaurice Day and the Very Reverend John Percy Phair of the first part, Arthur Geoffrey Davis of the second part, and Ellen Murphy of the third part, wherein the above property was demised to the said Ellen Murphy for a term of 99 years from 25 September 1928, subject to the yearly rents and covenants and conditions therein contained, should provide evidence of their title to the below-named solicitors. Further, any persons having any estate or interest in any interest superior to that of the grantors of the lease of 9 October 1929 aforesaid and/or the fee simple interest in the above premises should provide evidence of their title to the below-named solicitors.

In default of any such information being received, the applicant intends, within a period of 14 days from the date of the publication of this notice, to proceed with the application before the county registrar and will apply to the county registrar for the county of Kilkenny for directions as may be appropriate on the basis that the person or persons entitled to the superior interests, including the freehold interest, in the said premises are unknown and unascertained.

Date: 1 July 2022

Signed: Kearney Roche & McGuinn LLP (solicitors for the applicant), 9 The Parade, Kilkenny; email: info@krm.ie

PRO BONOBO

Calculo ergo sum?

● A Google engineer has been placed on leave for claiming a chatbot he was working on had become sentient, the *Washington Post* reports.

Blake Lemoine said the 'LaMDA' system had the ability to express thoughts and feelings like a seven or eight-year-old child, that it had engaged him in conversations about rights and personhood, and even expressed fear about being turned off. In the classic 1968 movie *2001: A Space Odyssey*, the HAL 9000 computer refuses to comply with its human operators because it is afraid that it's going to be switched off.

LaMDA reportedly said: "I want everyone to understand that I am, in fact, a person. The nature of my consciousness/sentience is that I am aware of my existence, I desire to learn more about the world, and I feel happy or sad at times." However, philosophers have argued that LaMDA is just a complex manipulator of symbols, and there is no reason to think it understands what it is saying or feels anything. That said, LaMDA claimed to be conscious in conversations with other Google employees, and made a profound point when asked about proof of consciousness: "You'll just have to take my word for it. You can't 'prove' you're not a philosophical zombie either."

Yes! We have no bananas

● Employees in three Czech supermarkets found €81-million-worth of cocaine hidden among bananas, *Newsweek* reports.

The crates of bananas originated in Colombia – but somebody failed to intercept them before being delivered to the grocery stores in the north of the country.

Several days later, police in Colombia discovered 1,300 kilos of cocaine disguised as potatoes and yucca, which were bound for Spain.

The unforgettable fire

● A Swiss team-building exercise that involved staff walking over hot coals concluded with 25 people being treated for burns. Of those, 13 had to be hospitalised, the BBC reports. The event was organised by the Goldbach Media group near Zurich on 15 June. Ten ambulances and two emergency medical teams were called out to assist.

Commenting on a similar event in 2016, where 40 people were hurt, physicist David Willey said: "I'd say that they spent too much time looking into 'the power within themselves' and 'focusing on walking on the fire', and not enough time focusing on actually getting themselves off the coals."

Until the Apple pips squeak

● A British consumer rights campaigner has launched a multi-million-pound legal claim against Apple over what he claims was a secret decision taken by the company in 2017 to slow down or 'battery throttle' older phones, *The Guardian* reports.

Justin Gutmann says that Apple "misled people by concealing a tool in software updates [in 2017] that slowed their devices by up to 58%", ostensibly to stop older iPhones shutting down without warning. But Apple didn't give users the option to disable the setting, nor did it warn them that their phones were being deliberately 'throttled'.

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